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# EDITORIAL

Distance Education is the cost-effective viable alternative to formal system of education. Due to the technological intervention it is gaining momentum and its inbuilt flexibility has put it on the growth trajectory. Access and equity issues are well addressed by the Distance Education System. The Directorate of Distance Education, University of Kashmir is offering differential fee structure to facilitate entry of the 'have nots' in socially relevant and professional programmes. Today it serves the educational aspirations of thousands of students belonging to geographically challenged areas through a network of thirteen well equipped study-cum-information centres. It has developed linkages with national and international organizations, to evolve a methodology for enhancing Gross-Enrollment Ratio, (GER) without sacrificing the essence of quality. The Directorate has taken a lead in E-Governance initiatives and has created single-window-information-student services (SWISS) for its learners. The Directorate has also made a considerable national and international presence by inviting experts to deliver extension lectures in various subjects. Various capacity-building-initiatives for the faculty involved in ODL system are being materialized, by way of seminars, workshops and training programmes. Extension education activities are strengthened and have been synchronized with the objective of Distance Education 'reaching the unreached'.

Over the years Directorate has lived upto the country expectations of providing education to the marginalized section of the society. The Directorate has taken an initiative of preparing a supplementary reading material to its learners in the form of computerized- learning- packages. Students have been made to sit and do a serious homework by way of comprehensive set of assignments. The Directorate believes in the principle that the journey of thousand miles always begins with a single step. In light of this principle the Directorate has set a pragmatic vision to prepare a total quality management (TQM) model for distance education which shall be a bench mark for others to follow. Practical intervention strategies have been chalked out this direction.

We have made the present edition of the journal, multi-disciplinary, because different programmes come under the ambit of distance education. The articles and papers reflected in this journal are highly implicative and fruitful. The content shall help the readers to identify the new research problems for exploration. It shall help in the exchange of intellectual capital among the faculty and open up the new doors of knowledge. I am indebted to all the authors whose work has been published in this issue.

Lastly through this publication, I wish best of luck to all the readers and hope they shall continue to contribute their papers for our journals. Comments and suggestions are welcomed.

*Prof. (Dr.) Neelofar Khan*
**Director**

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# A COMPARATIVE STUDY OF INTELLIGENCE AND ACADEMIC ACHIEVEMENT OF KASHMIRI AND PAKHTOON STUDENTS

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## ABSTRACT

*The study was conducted with an objective to compare and study the intelligence and academic achievement of Kashmiri and Pakthoon students. The sample of 120 students was drawn, Mehrotras Mixed Type Group Test of intelligence and aggegrate percentage of marks as indicator of academic achievement was used. The final results of the study depicts that the Kashmiri and Pakhtoon students differ significantly on academic achievement and intelligence accordingly.*

*Key words: Intelligence, Academic Achievement and students*

## Introduction

Man is bestowed with a with certain mental abilities, which make him a rational being. Who can reason, understand and adjust himself to new situations. Man by using his mental powers is superior to all other animals and are not similar in their intelligence. There are differences in mental powers. Some can learn with a good speed whereas others are very slow in learning.

Intelligence has been defined in various ways as a capacity for compression and reasoning, as the ability to profit from experience to absorb new information and to react reasonably to new situation and as the ability to solve problems.

**Stern** defined intelligence as," A general capacity of an individual consciously to adjust his thinking to new environment."

**Buckingham** defined intelligence as, "Intelligence is the learning ability."

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Intelligent pupils show rapid progress in Academic achievement. The academic achievement of pupils refers to the knowledge attained and skills developed in school subjects. Academic achievement is of paramount importance. It has been indicated that a good number of variables such as personality characteristics of the learners, the organizational climate of the school, curriculum planning, teaching-learning setup, variables arising out of home influence achievement in different degrees. Each of them is actually a cluster of variables, which individually or on interaction with others have their influence on achievement. Both nature and nurture play a combine role in making an achieving individual.

Trow(1956)defined Academic achievement as "knowledge attaining ability or degree of competence in school tasks usually measured by standardized test and expressed in grade or units based on pupil's performance."

## Need and Importance of the Study

Man is primarily distinguishable from the lower animals because of his educable ability. He is bestowed with intelligence which is needed by him to solve problems, think abstractly, comprehend complex ideas, learn quickly and learn from experiences. An intelligent individual reflects a broader and deeper capability of comprehending the surroundings-"catching on," " making sense" of things' or "figuring out" what to do and what not to do. The unique quality of human beings, to design or to give a concrete shape of his imaginations, helped him to come out from his primitive stage to a position where he dominates over his surroundings. It is science education ,which really means to make a person to identify the problem around, to observe, to analyze, to make hypothesis, to experiment, to infer and to generalize and to apply the acquired knowledge and skills where required.

The growing concern of researchers, to understand ethnic groups, cultural diversity, has generated a demand for cross-cultural studies. The characteristics of these studies is their comparative nature i.e., they involve a comparison across two different cultures on a focal phenomenon. Cross-cultural studies helps a researcher, to understand people of different ethnic groups, to identify various problems like value placed on education, Intellectual capacity etc. These studies are very important as they help the members of the teaching learning community to plan an all-round curriculum that lead the students to uncover, understand and practice the processes, think independently which happens to be the ultimate goal of education .

A considerable number of studies have been undertaken, but for the purpose of the present study there has been hardly any study. It is against this background that the present investigator felt interested in selecting the problem of studying intelligence and academic achievement of ethnic groups.

## Statement of the Problem

The problem of the present study was formulated as under:

**"A comparative Study of Intelligence and Academic achievement of kashmiri and pakhtoon students".**

## Objectives

The objectives of the present study read as under:

1. To measure the intelligence of Kashmiri and pakhtoon school going boys and girls.
2. To measure the academic achievement of Kashmiri and pakhtoon school going boys and girls.
3. To compare the intelligence of boys and girls of Kashmiri and pakhtoon schools.
4. To compare the academic achievement of boys and girls of Kashmiri and pakhtoon schools.

## Hypotheses

1. There is a significant mean difference between kashmiri and pakhtoon students on intelligence test
2. There is a significant mean difference between Kashmiri boys and girls on intelligence test.
3. There is a significant mean difference between pakhtoon boys and girls on intelligence test.
4. There is a significant mean difference between Kashmiri boys and pakhtoon boys on intelligence test.
5. There is a significant mean difference between Kashmiri girls and pakhtoon girls on intelligence test.

6. There is a significant mean difference between kashmiri and pakhtoon students on academic achievement.
7. There is a significant mean difference between kashmiri boys and girls on academic achievement.
8. There is a significant mean difference between pakhtoon boys and girls on academic achievement.
9. There is a significant mean difference between kashmiri boys and pakhtoon boys on academic achievement.
10. There is a significant mean difference between kashmiri girls and pakhtoon girls on academic achievement.

## Sample

The sample of the present study comprised of 120 kashmiri and pakhtoon students (both boys and girls)drawn from the government schools.

## Tool Used

The tools for the present study were selected in a manner to achieve optimum level of confidence by the investigator for the accomplishment of the objectives of the study. The investigator selected the following tools to collect the relevant data.

1. Mehrotras Mixed Type Group Test of Intelligence.
2. Aggregate percentage of marks as indicator of academic achievement.

## Statistical Treatment

The data collected was subjected to the following statistical treatment:

1. Mean
2. S.D
3. t-test

## Analysis and Interpretation

In order to achieve the objectives formulated for the present study, the data collected has been tabulated as under

**Table 01**: Showing Significance of mean difference between kashmiri and pakhtoon students on intelligence test.

| Group | N | Mean | S.D | t-value | Level of significance |
|---|---|---|---|---|---|
| Kashmiri | 60 | 59.11 | 4.39 | 2.10 | Significant at .05 level |
| Pakhtoon | 60 | 60.46 | 2.51 | | |

The above table shows the significance of mean difference between Kashmiri and pakhtoon students towards intelligence test and depicts that the calculated t-value (2.10) exceeds the tabulated t-value, which indicates the significance at .05 level. The results specify that kashmiri and pakhtoon students have different intelligence as kashmiri students are more intelligent than pakhtoon students.

**Table 02**: Showing Significance of mean difference between kashmiri boys and girls on intelligence test:

| Group | N | Mean | S.D | t-value | Level of significance |
|---|---|---|---|---|---|
| Boys | 30 | 56.23 | 5.7 | 5.1 | Significant at .01 |
| Girls | 30 | 62 | 2.38 | | |

The above table shows the significance of mean difference between kashmiri boys and girls and depicts that the difference is significant, as our calculated t-value (5.1)exceeds from the tabulated t-value, which indicates the significance at .01 level. This confirms that the attitude of boys and girls towards intelligence is not similar.

**Table 03**: Showing Significance of mean difference between pakhtoon boys and girls on intelligence test.

| Group | N | Mean | S.D | t-value | Level of significance |
|---|---|---|---|---|---|
| Boys | 30 | 58.8 | 1.92 | 5.2 | Significant at .01 |
| Girls | 30 | 62.13 | 2.98 | | |

The above table shows the significance of mean difference between pakhtoon boys and girls reveals that the difference is significant, as our calculated t-value(5.2) exceeds from the tabulated t-value, which indicates the significance at .01 level .This confirms that the attitude of boys and girls towards intelligence is not similar

**Table 04**: Showing Significance of mean difference between kashmiri boys and pakhtoon boys on intelligence test

| Group | N | Mean | S.D | t-value | Level of significance |
|---|---|---|---|---|---|
| Kashmiri boys | 30 | 56.23 | 5.7 | 2.35 | Significant at .05 |
| Pakhtoon boys | 30 | 58.8 | 1.92 | | |

The above table shows the significance of mean difference between kashmiri boys and pakhtoon boys depicts that the difference is significant, as our calculated t-value (2.35) exceeds from the tabulated t-value, which indicates the significance at .05 level. This confirms that the attitude of kashmiri boys and pakhtoon boys towards intelligence is not similar.

**Table05:** Showing Significance of mean difference between kashmiri girls and pakhtoon girls on intelligence test.

| Group | N | Mean | S.D | t-value | Level of significance |
|---|---|---|---|---|---|
| Kashmiri girls | 30 | 62.00 | 2.38 | 0.11 | Not significant |
| Pakhtoon girls | 30 | 62.13 | 5.7 | | |

The above table shows the significance of mean difference between kashmiri girls and pakhtoon girls on intelligence test and depicts that the calculated t-value(0.11) is less than the tabulated t-value at .01 and .05 level of significance. This result specifies that the kashmiri girls and pakhtoon girls have similar intelligence.

**Table 06**: Showing Significance of mean difference between kashmiri and pakhtoon students on academic achievement.

| Group | N | Mean | S.D | t-value | Level of significance |
|---|---|---|---|---|---|
| Kashmiri | 60 | 64.04 | 20.04 | 1.28 | Not Significant |
| Pakhtoon | 60 | 60.02 | 18.04 | | |

The above table shows the significance of mean difference between kashmiri and pakhtoon students on academic achievement and depicts that the difference is not significant, as our calculated t-value(1.28)is less than the tabulated t-value at .01 and .05 level of significance. This confirms that both kashmiri and pakhtoon students show similar academic achievement.

**Table07**: Showing Significance of mean difference between boys and girls of kashmiri school s on academic achievement.

| Group | N | Mean | S.D | t-value | Level of significance |
|---|---|---|---|---|---|
| Boys | 30 | 56.06 | 9.69 | 1.36 | Not Significant |
| Girls | 30 | 52.04 | 12.33 | | |

The above table Shows the Significance of mean difference between kashmiri boys and girls on academic achievement and depicts that the difference is not significant, as our calculated t-value(1.36) is less than the tabulated t-value at .01 and .05 level of significance .This confirms that both boys and girls show similar academic achievement.

**Table 08**: Showing Significance of mean difference between boys and girls of pakhtoon school s on academic achievement.

| Group | N | Mean | S.D | t-value | Level of significance |
|---|---|---|---|---|---|
| Boys | 30 | 54.04 | 10.22 | 1.37 | Not Significant |
| Giels | 30 | 58.0 | 12.24 | | |

The above table Shows the Significance of mean difference between boys and girls of pakhtoon on academic achievement and depicts that the difference is significant, as our calculated t-value(1.37) is less than the tabulated t-value at .01 and .05 level of significance. the results confirm that the pakhtoon boys and girls show similar academic achievement.

**Table 09**: Showing Significance of mean difference between kashmiri boys and pakhtoon boys on academic achievement.

| Group | N | Mean | S.D | t-value | Level of significance |
|---|---|---|---|---|---|
| Kashmiri boys | 30 | 56.06 | 9.69 | 0.77 | Not Significant |
| Pakhtoon boys | 30 | 54.04 | 10.22 | | |

The above table Shows the Significance of mean difference between kashmiri boys and pakhtoon boys on academic achievement and depicts that the calculated t-value (0.77)is less than the tabulated t-value at .01 and .05 level of significance at .01 level. the results confirm that the kashmiri boys and pakhtoon boys show similar academic achievement.

**Table 10**: Showing Significance of mean difference between kashmiri girls and pakhtoon girls on academic achievement.

| Group | N | Mean | S.D | t-value | Level of significance |
|---|---|---|---|---|---|
| Kashmiri girls | 30 | 52.04 | 12.33 | 1.86 | Not Significant |
| Pakhtoon girls | 30 | 58.02 | 12.24 | | |

The above table shows the significance of mean difference between kashmiri girls and pakhtoon girls on academic achievement and depicts that the difference is not significant, as our calculated t-value (1.86) is less than the tabulated t-value, at .01 .05 level of significance. This confirms that the kashmiri girls and pakhtoon girls show similar academic achievement.

## Conclusions

On the basis of analysis, interpretation and discussion certain meaningful conclusions have been drawn which are given below.

1. It has been found that kashmiri students are more intelligent than the pakhtoon students.
2. The girls of kashmiri and pakhtoon schools are more intelligent than the boys of the respective schools.
3. The kashmiri boys are more intelligent than the pakhtoon boys.
4. The kashmiri girls are more intelligent than pakhtoon girls.
5. It has been found that kashmiri students showed better academic achievement than pakhtoon students.
6. Kashmiri boys showed better academic achievement than pakhtoon boys.
7. Kashmiri girls showed better academic achievement than the pakhtoon girls.
8. Boys and girls of kashmiri schools showed similar academic achievement.

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# ATTITUDE OF ELEMENTARY LEVEL TEACHERS TOWARDS TEACHING PROFESSION

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## ABSTRACT

*The study was undertaken to study the Attitude of young and old; male and female elementary level teachers towards teaching Profession. The sample for the study was 100 male ( 50 young and 50 old) and 100 female ( 50 young and 50 old ) elementary level teachers; selected randomly from three education zones of District Baramulla. Minnesota teacher attitude inventory (MTAI) of Cook et al was employed for the collection of data and 't' test was used for the analysis of data. The results of the study highlight that:*

*i. Male Elementary level teachers have significantly better attitude towards Profession of teaching as compared to Female Elementary level teachers. ii. No significant difference was found between young and old elementary level teachers towards profession of teaching at elementary level.*

## Introduction

The teacher is the main agency for implementing educational Programmes at various levels. The accumulated knowledge and experience of the human race is passed down from one generation to another, largely through teaching. Teachers determine to a large extent the destiny of a nation. Of all the different factors which influence the quality of education and its contribution to national development, the quality, competence, personality and attitude of teachers are undoubtedly the most significant. The most important factor in educational reconstruction is the teacher, his personal qualities, his educational qualification, his professional training and the place that he occupies in the school as well as in the community. Ministry of education document challenge of education; a policy perspective (1986) clearly states that the teacher performance is the most crucial input in the field of education. Whatever

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policies may be laid down, in the ultimate analysis, these have to be interpreted and implemented by the teachers as much through their personal example as through teaching- learning processes. The status of the teacher reflects the socio-cultural ethos of a society; no nation can rise above the level of its teachers.

The studies have been conducted on attitude of teachers at different levels. *Sherry* (1964) found that attitude towards profession is an important factor in determining success of the teacher. *Arora* (1976) found difference in attitude between effective and ineffective teachers. Effective teachers have favourable attitude towards teaching, teacher pupil relationship, students, democratic practices and modern methods of teaching. *Goyal* (1980) found, the attitude and job satisfaction of different groups of teachers did not differ significantly. *Agarwal* (1980) found, there was no significant difference in attitude towards the teaching higher, middle, low socio-economic status groups and teaching had been consistently very popular aspiration from high school through college education. *Gupta* (1981) found, teachers at higher education have positive view towards higher education and male and female teachers showed significant difference in their attitudes. *Dutt* (1983) found, experience seemed to have no influence on the attitude, but the sex difference had some influence. *Sharda* (1988) found, teachers at different stages had favourable attitude towards creative learning. *Maurya* (1990) found, external surrounding contributed a great deal in formulating teaching attitude. Attitude and academic achievement were not significantly related. *Roma* (1999) found, regular trainees had a more favourable attitude towards teaching than the correspondence course trainees. Chandrasekhar (2006) found, that student teachers are unhappy about different aspects of their training programme and felt that the present day teacher education curriculum should be restructured and organized. Almost all the studies on attitude of teachers have been conducted on secondary, higher secondary and university teachers. Very few studies have been conducted on elementary level teachers with respect to attitude. No, study has been reported in Kashmir on attitude of elementary level teachers. With this background the present investigators have made a humble attempt to study "***the attitude of elementary level teachers towards teaching profession***" in Kashmir.

## Objectives:

i. To study the attitude of young and old elementary level teachers.
ii. To study the attitude of male and female elementary level teachers.

## Hypotheses:

Keeping in view the objectives of the present study, the following Hypotheses were set up for testing:

i. Young and old elementary level teachers differ significantly with reference to their attitude towards their profession.

ii. Male and female elementary level teachers differ significantly with reference to their attitude towards their profession.

## Operational definitions of variables:

i. **The Teachers :** Refers to those male and female teachers, who are working in Govt. elementary level schools in district Baramulla ( Zone-Sopore, Rohama and Dangerpora).

ii. **Young Teachers :** Refers to those male and female teachers who fall within the age group ( 25-40), working in Govt. elementary level schools.

iii. **Old Teachers :** Refers to those experienced male and female teachers, who fall within the age group (41 years and above), working in Govt. elementary schools.

## Attitude:

*" For the present study attitude will refer to the scores gained by sample subjects on Minnesota Teacher attitude inventory of cook et al ( MTAI)".*

## Methodology and Procedure:

### Sample:

In district *Baramulla* there are 22 education zones. Out of these 22 education zones, 3 education zones viz.; Sopore ,Rohama and Dangerpora were randomly selected for the selection of sample subjects. Out of these three education zones 19 Govt. , elementary schools were randomly selected for the selection of the sample. In the final analysis we were left with 200 teachers teaching at elementary level. the breakup of the sample sex-wise and age wise is given in Table –I .

**Table – 1**

| Level of teaching Elementary | Young teachers 25- 40 years of age (*N = 100* ) | | Old teachers 41 years and above (*N = 100* ) | | Total |
|---|---|---|---|---|---|
| | Male | Female | Male | Female | 200 |
| | 50 | 50 | 50 | 50 | |

**Tool :**

Minnesota Teacher attitude inventory ( MTAI ) was used as a tool for the collection of data on the attitude of elementary level teachers.

**Analysis of the Data :** 't' Test was used for the analysis of Data. The data is analysed in the following Tables:

***Table- 2.0 Significance of mean difference between young and old teachers teaching at elementary level (N = 100 ), on Minnesota teacher Attitude inventory ( MTAI ).***

| **Teacher Group** | ***N*** | $\overline{x}$ | ***S.D*** | ***'t'*** |
|---|---|---|---|---|
| Young | 100 | 6.70 | 5.38 | 0.42 N.S |
| Old | 100 | 7.0 | 4.63 | |

N.S – Not Significant.

***Table – 3.0 Significance of mean difference between Male and Female teachers teaching at elementary level ( N = 100), on Minnesota teacher Attitude inventory ( MTAI ).***

| **Teacher Group** | ***N*** | $\overline{x}$ | ***S.D*** | ***'t'*** |
|---|---|---|---|---|
| Male | 100 | 7.65 | 6.08 | 2.28 * |
| Female | 100 | 6.05 | 3.85 | |

**Note :** * - Significant at 0.05 level.

## Interpretation and Discussion

## Attitude of Young and Old Elementary Level Teachers:

From the Table 2.0 on MTAI test, It is obvious that the mean score on attitude of young teachers towards teaching profession is (6.70), and that of old teachers is ( 7.0). The obtained 't' value is (0.42) which is statistically insignificant. So no decision can be taken, as two groups do not differ significantly on the attitude towards teaching profession. The results of Table 2.0 analysed above are in line with *Soran* ( 1975);

*Sharad* (1990); *Srinivasion.* ( 1992); *Panda* (1996). *Soran* (1975) found that attitude towards teaching profession was not positively related to experience in the teaching profession as well as age. *Sharad* ( 1990) found that no significant difference existed between the attitudes of the groups of teachers of higher secondary stage towards creative teaching and learning, formed on the basis of age, teaching experience and academic disciplines. *Srinivasion* (1992) has found that age, teaching experience and community did not significantly effect the attitude of teachers towards teaching. *Panda* (1996) found no significant difference between age, qualification, pre service and in service, subjects of study in respect of their attitude towards teaching profession.

## The Attitude of Male and Female Elementary level Teachers:

The perusal of the Table 3.0 on MTAI test makes it clear that, the mean of male teachers (7.65) is better than the Mean of female teachers (6.05) on the attitude towards teaching profession. The obtained 't' value (2.28) is statistically significant at 0.05 level. The results indicate that male teachers have shown positive attitude towards teaching profession than female teachers. The male teachers are superior in Social intelligence, energy values and teaching techniques. The male teachers have a better sense of preparation involving humour and justice. They posses an attitude which reflects group solidarity resulting from common- goals, common understanding and common preparation. Male teachers have shown better attitude than female teachers in response to attitude towards children, subject matter, teaching and school. Male teachers are ready to help students, they have shown positive attitude in providing the freedom to children in learning. Male teachers have outscored female teachers on attitude towards teaching profession. The results of Table 3.0 discussed and analysed above are in line with NCERT (1971), observed a significant difference between male and female teachers, while determining the attitude of teachers on various issues related to their professional life and efficiency; *Kaul,* (1972) reported male popular teachers had a favorable attitude towards school teaching and male teachers were effective in their work as teachers; *Ahluwalia* (1974) also found difference in attitude among teachers sex wise and institution wise but were not significant; *Bushan* (1981), in his findings revealed that the teachers attitude towards students varied by sex. Male teachers were found to have more positive attitude than females; *MahaPatra,* (1987) , who has made it clear that sex had a significant effect on attitude towards teaching, teaching success, intelligence and vocational interests; *Srinivasion* (1992) found that attitude of male teachers is positively correlated with empathy, age and neurotic traits of personality. Women teachers differ significantly from men teachers with respect to lack of empathy, neuroticism and introversion; *Panda* (1996) found that male teachers are superior to female teachers with respect to attitude towards teaching profession; *Lone* ( 1997) after post test during his study, has found difference in attitude between male and female teachers towards teaching. However the studies of *Som.* (1984) and *Tripathy* ( 1978) are contradicting with our results, who have found that female teachers have positive attitude than male teachers. *Sood* (1974) did not find any difference in attitude between male and female teachers. *Chandrasekhar* ( 2006 ) found that the sex variable has significantly influenced the attitude of the student teachers towards the teaching profession.

The results of study are in expected direction. The children of female teachers are mostly studying in private schools, it is obvious from various observations, researches and surveys that middle-upper and upper classes tend to send their children to private institutions and not to Govt. schools, particularly at elementary level that might be reason that male teachers have outscored female teachers on attitude towards teaching profession. *Shams-u-din* (1996) has found that most of the secondary school teachers come from or belonged to lower or middle classes. While majority of female secondary school teachers belong to middle or upper classes.

Female teachers to some extent are traditional and conservative in their approach while as male teachers are exploring themselves and are effective in their approach. Female teachers are more involved in domestic affairs than male teachers. Male teachers found enough time to interact with students and take part in the different school activities and this results in the development of positive attitude towards their teaching profession as compared to female teachers.

Keeping in view the results discussed above, the hypothesis:

*No. 01: " Young and old elementary level teachers differ significantly with reference to their attitude towards their profession" is rejected".*

*No.02:" male and female elementary level teachers differ significantly with reference to their attitude towards their profession" is accepted".*

## Conclusion:

The present study through the different stages of investigation arrived to the following conclusions which were the result of systematic statistical method as well as qualitative analysis of data.

i. *Male Elementary level teachers have significantly better attitude towards Profession of teaching as compared to Female Elementary level teachers.*
ii. *No significant difference was found between young and old elementary level teachers towards profession of teaching at elementary level.*

## Inferential Suggestions:

The findings of the present study reveal that there are certain factors which can be improved, so as to improve the attitude of elementary level teachers.

i. At the time of selection of elementary level teachers the positive and better attitude should be given weightage.

ii. Among the young and old; male and female elementary level teachers, the positive attitude should be developed towards students, school and teaching profession by different teacher education Programmes, Viz Pre-service, in-service , orientation and refresher courses.

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# "A COMPARATIVE STUDY OF CREATIVITY AND ACHIEVEMENT MOTIVATION OF B.ED GRADUATES THROUGH FORMAL AND DISTANCE MODE IN KASHMIR REGION"

Neelofar Khan*
N. A Gash**

## ABSTRACT

*The paper discusses about comparative study of creativity and achievement motivation of B.Ed graduates through the formal and distance mode in Kashmir region. In this study the sample of (200 B.Ed graduates) were randomly drawn from the formal and distance mode of education. Baqer Mehdi's verbal and non-verbal scale of creativity (1973), and Mukherjees Incomplete Sentence Blank (1977) were used for the measurement of Creativity & Achievement motivation. For the analysis of data, the raw creative scores obtained from the -B.Ed graduate subjects were converted into the standard scores (Z scores). Mean, S. D, t-test and analysis of variance were used for the tabulation of data. The results make it crystal clear that there is no significant difference in the components of creative abilities viz. fluency, flexibility, originality and elaboration through formal and distance mode of education. The study also reveals that there is no significant difference on the creative abilities sex-wise through the formal and distance mode. The levels of achievement motivation through the formal and distance mode, and the sexwise comparison on achievement motivation also do not show any significant difference. .*

**Key Words:-** *Creativity, Fluency, Flexibility, Originality, Elaboration, Achievement Motivation, B.Ed Graduates, Formal System Of Education, Distance Mode.*

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# A COMPARATIVE STUDY OF CREATIVITY AND ACHIEVEMENT MOTIVATION OF B.ED GRADUATES THROUGH FORMAL AND DISTANCE MODE IN KASHMIR

## Introduction

Being a novel area, numerous studies have been conducted on the creativity and achievement motivation. The enhanced interest in the area of creativity and achievement motivation is due to the fact that, to compare the creativity and achievement motivation of B.Ed graduates through the formal and distance mode. In the present study the investigators made firm attempt to see whether the formal and distance mode B.Ed graduates differ on these variables.

Creativity is the answer to varied problems of man in today's society. Innovations and discoveries of novel ideas and things ultimately lead to the civilization of life. The value and worth of human intellect is unlimited. Creativity is the greatest treasure of mankind. It is the cognitive creative talent that is pivotal in shaping our future. Creativity is a unique gift of nature, a highly valued human quality which has been known for a long time to have its influence on scientific, technological and artistic sphere of human activity. The rapidly changing demands and challenges existing in the world today have almost necessarily been accompanied with the creative thought. *Sing (1979); G. S. Sharma (1988); Buno (1989); Jain Smeeta (1992) & Mandal (1992),* reported the Indian Educational system is failing to envelop children's talent and intelligence and proved failure to them for a rational and creative living that makes education to explicit the creative talent at all levels for the futuristic success and prosperity.

The present study aims at to find out if there is any difference between the components of creativity i.e., the variable of fluency, flexibility, originality and elaboration of the B. Ed. graduates who are trained separately either from the formal mode or the distance mode of education. The study further aims at to see whether the graduates from these modes of education differ on the variable of achievement motivation. The different studies conducted in this field have achieved different findings. Few studies show that background, demography, sex, type of school and mode of education has essentially its impact on creative potential and achievement motivation, whereas the other studies emphasize no such impact on creative potential and achievement motivation.

## Objectives of the Study

1. To study the impact of training on the creative ability and the achievement motivation of B.Ed graduates trained in the formal and distance mode of Education.

2. To compare these two groups with respect to fluency, flexibility and originality (components of creative ability).
3. To compare these creative abilities between the male and female B.Ed graduates who were trained through the formal and distance mode (separately).
4. To compare the level of achievement motivation between the male and female B.Ed graduates who were trained through the formal and distance mode (separately).

## Methodology

### a) Sample

The data for the present study was collected randomly from 200 B.Ed graduates from the various formal and non-formal institutions, scattered throughout the valley. In every area 33-34 students were sampled from each mode of education (i.e., the formal and distance mode). The sample areas included the Southern, Central and Northern region of Kashmir province. The sample was drawn from the Anantnag, Baramulla, Budgam, Bandipora, Ganderbal, Kulgam, Kupwara, Pulwama, Shopian and Srinagar Districts. The institutions selected for data collection were chalked out on the basis of their historical background, area coverage and number of enrolled students.

### b) Tools

- Baqer Mehdi's Verbal Tool of Creativity (1973). (For the measurement of creativity).
- Baqer Mehdi's Non-Verbal Tool of Creativity (1973). (For the measurement of creativity).
- Mukherjees Incomplete Sentence Blank (ISB) (1977). (For the measurement of Achievement Motivation).

* 'VC ' - Verbal creativity.
** 'NVC'- Non verbal creativity.

### c) Statistical Analysis

Table 1 reveal that the 'F' value is.054, .053, 1.718, .000, and .301, which is not significant at any level. This means that the groups under study i,e. fluency, flexibility and originality (verbal creativity), elaboration & originality ( non- verbal creativity) from the formal and distance mode do not differ significantly in all the integrated five components of creativity on the analysis basis of F-test (ANOVA).

The analytical report of the table on the all dimensions of creativity is depicted as:-

- The fluency F-value scores on creativity is (.054), when we compare the formal and distance mode B. Ed graduates, the inferential analysis of variance value proved to be insignificant.
- Flexibility F-value scores on creativity is (.053), when we compare formal and distance mode graduates, the empirical value proved non-significant.
- Variance results of originality component of creativity is (1.718) on formal and distance mode on comparative basis, the B.Ed graduates do not show any difference on this dimension.
- Elaboration and originality dimension of creativity shows the F-value results as (.000) and (.301) respectively, as we compare the B.Ed graduates of formal and distance mode on the above said dimensions intensively, the results did not show significant difference.

**Table I:** Significance Of Difference Between/Among The Mean Scores Of B.Ed Graduates From The Formal And Distance Mode In Respect Of Fluency, Flexibility And Originality (Verbal –Creativity), Elaboration & Originality (Non Verbal Creativity).

| | | Sum of Squares | df | Mean Square | F Value | Sig. | Level of Significance |
|---|---|---|---|---|---|---|---|
| Fluency* Mode | Between Groups | .057 | 1 | .057 | .054 | .817 | Not Significant |
| | Within Groups | 210.784 | 198 | 1.065 | | | |
| | Total | 210.841 | 199 | | | | |
| Flexibility* Mode | Between Groups | .056 | 1 | .056 | .053 | .818 | Not Significant |
| | Within Groups | 210.098 | 198 | 1.061 | | | |
| | Total | 210.154 | 199 | | | | |
| Originality* Mode | Between Groups | 1.822 | 1 | 1.822 | 1.718 | .191 | Not Significant |
| | Within Groups | 209.976 | 198 | 1.060 | | | |
| | Total | 211.798 | 199 | | | | |
| Elaboration* Mode | Between Groups | .000 | 1 | .000 | .000 | .999 | Not Significant |
| | | 200.134 | 198 | 1.011 | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Within Groups Total | 200.134 | 199 | | | | |
| Originality* Mode | Between Groups<br>Within Groups Total | .320<br>210.372<br>210.692 | 1<br>198<br>199 | .320<br>1.062 | .301 | .584 | Not Significant |

Table II reveal that the significance of difference between the mean scores of male and female graduates, from the formal and distance mode in respect of achievement motivation, show the B.Ed graduates from the formal and distance mode on sexwise dimension do not differ significantly on their achievement motivation.

Similarly the t-value on sex wise comparison of achievement motivation of the formal mode is (0.109), which is not significant. Accordingly the t-value on sexwise comparison of achievement motivation of the distance mode graduates is (0.72) which is insignificant at both the levels on table of critical values of t (0.05 and 0.01 level of significance).

**Table I:** Significance Of Difference Between/Among The Mean Scores Of B.Ed Graduates From The Formal And Distance Mode In Respect Of Fluency, Flexibility And Originality (Verbal – Creativity), Elaboration & Originality (Non Verbal Creativity).

| | | **Sum of Squares** | **df** | **Mean Square** | **F Value** | **Sig.** | **Level of Significance** |
|---|---|---|---|---|---|---|---|
| Fluency* Mode | Between Groups<br>Within Groups Total | .057<br>210.784<br>210.841 | 1<br>198<br>199 | .057<br>1.065 | .054 | .817 | Not Significant |
| Flexibility* Mode | Between Groups<br>Within Groups Total | .056<br>210.098<br>210.154 | 1<br>198<br>199 | .056<br>1.061 | .053 | .818 | Not Significant |
| Originality* Mode | Between Groups<br>Within | 1.822<br>209.976<br>211.798 | 1<br>198<br>199 | 1.822<br>1.060 | 1.718 | .191 | Not Significant |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Groups<br>Total | | | | | | |
| Elaboration* Mode | Between Groups | .000 | 1 | .000 | .000 | .999 | Not Significant |
| | Within Groups | 200.134 | 198 | 1.011 | | | |
| | Total | 200.134 | 199 | | | | |
| Originality* Mode | Between Groups | .320 | 1 | .320 | .301 | .584 | Not Significant |
| | Within Groups | 210.372 | 198 | 1.062 | | | |
| | Total | 210.692 | 199 | | | | |

Table III reveal that the significance of difference between the mean scores of graduates from the formal and distance mode in respect of achievement motivation, it was found that the B.Ed graduates from the formal and distance mode do not differ significantly on their achievement motivation.

The results of the said table on mode wise comparison of achievement motivation of the formal and distance B.Ed graduates t-value is (1.00), which is insignificant at both the levels on table of critical values of t.

**Table III:** Significance of Difference between the Mean Scores of B.Ed Graduates from the Formal & Distance Mode In Respect Of Achievement Motivation.

| **Groups** | **Mean** | **S. D** | **SEM** | **N** | **t-value** | **Level of Significance** |
|---|---|---|---|---|---|---|
| Graduates (Formal) | 35.05 | 13.094 | 1.309 | 100 | 1.00 | Not significant |
| Graduates (Distance) | 33.18 | 13.420 | 1.342 | 100 | | |

## Results & Discussions

I. There is no significant difference in the creative abilities – on fluency, flexibility, originality 'VC', elaboration and originality 'NVC', between the trained graduates from the formal and distance mode.

II. There is no significant difference between the creative abilities – on fluency, flexibility, originality 'VC',, elaboration and originality 'NVC' on the basis of sex among the trained graduates from both the modes of education.

III. There is no significant difference in the level of achievement motivation between the trained graduates from the formal and distance mode.

IV. There is no significant difference in the level of achievement motivation between the male and female trained graduates being trained through the formal as well as from the distance mode of education.

## Conclusion

The B.Ed graduates in the Kashmir region show the integrated results on creativity and achievement motivation, the study depicts that the two groups with respect to fluency, flexibility and originality do not differ significantly. The creative abilities and the achievement motivation on sex-wise and mode wise (formal and distance mode) do not differ significantly on the statistical inferential report.

## Recommendations

The following recommendations have been put forth for further research in the field of creativity and achievement motivation:-

i. This study may be conducted to all the districts of Jammu and Kashmir State.

ii. To conduct research on teaching methods by which we can develop such teaching methodology that may help in fostering creativity among elementary and secondary school children.

iii. In the present study, only creativity and achievement motivation variables were worked out, in addition to these variables, other variables in co-ordination with the creativity can be worked to trace out the interactional effect of various variables on creativity like intelligence, I.Q, mental health etc.

iv. A correlation study on creativity and innovational enhancement in the state of J & K can be conducted, as to trace the effect of creativity on innovational achievement.

v. A comparative study on professional and academic courses on the creative dimension can be held.

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# ATTITUDE OF COLLEGE LECTURERS TOWARDS WEB BASED LEARNING

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## ABSTRACT

*This study was conducted to explore the Attitude of college lecturers towards web-based learning. The sample of this study included 278 college lecturers. The self developed questionnaire was used by the investigator to access Attitude of college lecturers towards web-based learning. The results supported that there is no significant difference in the attitude of lectures towards web based learning they beliefs that web-based learning is an important tool for enhancing the teaching learning process in a classroom situation. It made an enormous contribution to improving education.*

**Index Terms**—Attitude, *Web Based Learning, college lecturers.*

## Introduction

In the present century teacher is not only the source of knowledge of information because of globalization. Traditional approaches of teaching and learning have been challenged by new and innovative approaches based on the latest advances in computer and internet technology. The vast resources and opportunities that computers and internet provide have brought about new tools, approaches, and strategies in teaching and learning. At education system, technology is main facilitator that provides to contribute system under requiring needed knowledge. Technology provides us to know and follow all issues with the help of the basic item, which is Internet. Internet is a wide range of supporter by providing all contacts requirements and all types of information, searching facilities with its various digital tools. Technology has impact on education with today's contemporary term as Educational Technology. Technological advancements also became an integral part of higher education instruction because higher education deals with the critical thinking. These technological advances have enabled electronic commerce system, anytime, anyplace data retrieval and updating education, professional development, and the rapid growth of e-learning. With increased the usage of instructional technology, the use of electronic textbooks are slowly making their way into the higher education system. The rapid development of computer and Internet technologies has dramatically increased the ways of teaching and learning. Among these new approaches, online Web based education has become a promising field. Various web based technologies have made an enormous contribution to improving education and to the development of learning tasks. Increasing competitiveness, technological change and the re-engineering of production and social processes require continuous upgrading of skills and personal growth. Increased competitiveness and the resulting need to improve and diversify the training the offer means that trainers must have the theoretical as well as practical knowledge in new techniques for delivering training. Only a creative and enthusiastic teacher can incorporate the modern development of ICT in the classroom very successfully. For analyzing data ANOVA one way classification and t-test were used as statistical techniques.

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## Need and Significance

World is becoming global today, people are connected virtually. Social and technological changes have salutary effects on all walks of human life including teaching and learning. In the last decade of last century and the first decade of the present millennium, education sector is under rapid change. Changes that are seen is relating to the information and communication technologies. Teachers of schools, faculty in colleges are busy in downloading important updated material. Face to face teaching is replaced by virtual learning environment and web based learning. Teacher's role has been changed and has become the facilitator who creates connections between net workings. Teachers at higher education sector prefer to have web based teaching and learning. Therefore Web based learning is now considered as an alternative to classroom face to face teaching. The Web has also expanded opportunities for the increasing information to enhance the traditional classroom instruction. Currently, there is greater possibility of accessing up-to-date content, as updating information on the web can be done faster and more easily than with textbooks.

Web based learning transforms the passive students to the active students, with instructor guidance and facilitating aiding them in the tasks of analyzing and synthesizing information. Educators in web based learning become more like coaches and facilitators linking students directly to desired resources and sources of information rather than acting in the traditional role of delivering information. It is a transformative vehicle for increasing the piece of change and reform in higher education. This technology facilitates and delivers distance learning courses. Computers and online learning are rapidly becoming important components in fundamental curriculum of Education. The computer and online learning curriculum have been incorporated into all levels of the educational systems. However, the instructional effectiveness of computer and online learning are related to many factors including students' attitudes towards these technologies. The main purpose of this research was to study the attitudes of teachers towards instructional technology and specifically web based support material for the classroom. Given its increased use, it is important to understand how instructional technology and the technologically rich environments are influencing teacher's attitudes toward learning. This study examines how teachers perceive the incorporation and use of computer technology resources, in particular online concordance software, in vocabulary teaching practices. The study specifically investigated teachers' attitudes towards and approaches to using these resources in their vocabulary instruction. The study also explored the factors that affect teachers' use or non-use of computer technology resources for these purposes. The main purpose of this research was to study the attitudes of teachers towards instructional technology and specifically web based support material for the classroom. Given its increased use, it is important to understand how instructional technology and the technologically rich environments are influencing teacher's attitudes toward learning. The study analyses, differences in attitude change towards computer technology for teachers using web-based resources and those using traditional textbooks and Computer literacy as a predictor of attitudes toward computer technology.

## Objectives of the Study

1. To study the significant difference in the attitude of Govt ,aided and unaided college lecturers.
2. To study the significant difference in the attitude of male and female college lecturers.
3. To study the significant difference in the attitude of rural and urban college lecturers.
4. To study the significant difference in the attitude of science and arts college lecturers.
5. To study the significant difference in the attitude of high experienced (above 10 year) and low experienced (below 5 year) college lecturers.

## Hypotheses of the Study

1. There is no significant difference in the attitude of government, aided and unaided college lecturers.
2. There is no significant difference in the attitude of male and female college lecturers.
3. There is no significant difference in the attitude of rural and urban college lecturers.
4. There is no significant difference in the attitude of science and arts college lecturers.
5. There is no significant difference in the attitude of high experienced (above 10 year) and low experienced (below 5 year) college lecturers.

## Sample

The investigation was conducted in three districts of Jammu and Kashmir, state in INDIA such as Pulwama / Ananthnag/ Srinagar and took a sample size of 278 lecturers to assess their attitude towards web based learning. For this Descriptive survey method was used.

## Tool Used

An Attitude scale was used by the investigator as a result tool in the present study. It consisted of 35 statements. All the statements are related with web based learning. It was 3 point scale. The responses were presents in the three forms agree undecided and disagree and weights of 3, 2, and 1 are given in order for the favourable statements and the unfavourable statements.

## Results and Interpretation

**Table 1.** Attitude of Govt., Aided and Unaided college lecturers towards web based learning.

| *Group* | *Count* | *Sum* | *Average* | *Variance* |
|---|---|---|---|---|
| Govt. | 38 | 3101 | 81.60 | 35.71 |
| Aided | 138 | 10942 | 79.29 | 27.73 |
| Private | 102 | 8905 | 87.30 | 4508.41 |

**TABLE**

**1.1**

**ANOVA (One Way Classification)**

| **Source of variation** | **Sum of squares** | **Degree of freedom** | **Mean sum of squares** | **F** | **Table value of F** | **Remarks** |
|---|---|---|---|---|---|---|
| Between the Group | 3805.829 | 2 | 1902.914 | 1.136458 | At 0.05 Level=3.028 | Not Significant |
| Within the Group | 460469.1 | 275 | 1674.433 | | | |
| Total | 46427.9 | 277 | | | | |

The result shows the significance of difference of means of attitude of Govt. Aided Private college lecturers towards web based learning. The mean score of the Govt. college lecturers is 81.60 and the mean score of Aided college lecturers is 79.72 and the mean scores of private college lecturers is 87.30. The critical ratio comes out to be 1.1364 which is insignificant at 0.05 level of significance. This means the tabulated value of ‘F’ is greater than the calculated value of ‘F”. So null hypothesis is accepted this means the there is insignificant difference in the attitude of Govt./Aided/Private college lecturers towards web based learning.

## TABLE 2

**Table 2. Attitude of Male and Female College Lecturers towards Web Based Learning.**

| *Sample group* | *N* | *Mean* | *Standard Deviation* | *Degree of freedom* | *t-value* | *Tabulated value of ‘t’* | *Remarks* |
|---|---|---|---|---|---|---|---|
| Male | 80.06 | 145 | 4.87 | 276 | 0.4812 | At 0.05 level=1.96 | Insignificant |
| Female | 80.09 | 133 | 5.05 | | | At 0.01 level=2.97 | |

The result shows the significance of difference of means of attitude of male and female college lecturers towards web based learning. The mean score of the male college lecturers is 80.06 and the mean score of female college lecturers is 80.09. The critical ratio comes out to be 0.4812 which is insignificant at 0.05 level of significance. This means the tabulated value of‘t’ is greater than the calculated value of‘t’. So null hypothesis is accepted this means the there is insignificant difference in the attitude of male and female college lecturers towards web based learning.

## TABLE 3

**Table 3. Rural and Urban college lecturers towards web based learning.**

| *Sample Group* | *N* | *Mean* | *S.D* | *Degree of Freedom* | *t-value* | *Tabulated value of ‘t’* | *Remarks* |
|---|---|---|---|---|---|---|---|
| Rural | 128 | 79.75 | 5.306362 | 276 | 0.083 | At 0.05 level=1.96 | Not significant |
| Urban | 150 | 80.66 | 5.617363 | | | At 0.01 level=2.97 | |

The result shows the significance of difference of means of attitude of rural and urban college lecturers towards web based learning. The mean score of the rural college lecturers is 79.75 and the mean score of urban college lecturers is 80.66. The critical ratio comes out to be 0.083 which is insignificant at 0.05 level of significance. This means the tabulated value of 't' is greater than the calculated value of 't'. So null hypothesis is accepted this means the there is insignificant difference in the attitude of rural and urban college lecturers towards web based learning.

## TABLE 4

**Table 4. Attitude of Arts and Science stream college lecturers towards web based learning**

| *Sample Group* | *N* | *Mean* | *S.D.* | *Degree of Freedom* | *t-value* | *Tabulated value of 't'* | *Remarks* |
|---|---|---|---|---|---|---|---|
| Arts | 115 | 80.23 | 5.47 | 276 | 0.3085 | At 0.05 level=1.96 | Not significant |
| Science | 163 | 79.62 | 5.53 | | | At 0.01 level=2.97 | |

The result shows the significance of difference of means of attitude of Arts and Science stream college lecturers towards web based learning. The mean score of the Arts college lecturers is 80.23 and the mean score of Science college lecturers is 79.62. The critical ratio comes out to be 0.3085 which is insignificant at 0.05 level of significance. This means the tabulated value of't' is greater than the calculated value of't'. So null hypothesis is accepted this means the there is insignificant difference in the attitude of Arts and Science stream college lecturers towards web based learning.

## TABLE 5

**Table 5. Attitude of High experienced and Low experienced college lecturers towards web based learning.**

| *Sample Group* | *N* | *Mean* | *S.D.* | *Degree of Freedom* | *t-value* | *Tabulated value of 't'* | *Remarks* |
|---|---|---|---|---|---|---|---|
| High Experienced | 113 | 80.87 | 4.96 | 276 | 0.1702 | At 0.05 level=1.96 | Not significant |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Low Experienced | 165 | 80.27 | 5.45 | | | At 0.01 level=2.97 | |

The result shows the significance of difference of means of attitude of High experienced and Low experienced college lecturers towards web based learning. The mean score of the High experienced college lecturers is 80.87 and the mean score of Low experienced college lecturers is 80.27. The critical ratio comes out to be 0.1702 which is insignificant at 0.05 level of significance. This means the tabulated value of 't' is greater than the calculated value of 't'. So null hypothesis is accepted this means the there is insignificant difference in the attitude of High experienced and Low experienced college lecturers towards web based learning.

## Conclusions

The access to digital communication technology with multi capability has made learning more vivid, interesting and joyful. The WWW has a vast collection of information of various subjects which is not always available in an organized array. Teachers or lecturers are an important element in the educational network. So the teachers should be encouraged, through training and support, to the use of Web and other information technology systems in their teaching. They need example and awareness of good practice, and standards should be set in relation to how teachers present information and manage the learning environment.

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# EDUCATION, KNOWLEDGE AND POWER: A DISCUSSION OF CO - RELATIONSHIP IN A NEW GLOBALIZED WORLD ORDER WITH SPECIAL REFERENCE TO INDIAN SOCIETY

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## ABSTRACT

*The present study analyses the co - relationship of education, knowledge and Power and complex power relations and hierchization that exist in society based on education. It explores how the content of education is determined and how education reinstates social inequality. Not all groups enjoy equal access to the educational resources and hence 'equality of condition' does not exist in the first place. Schools promote the technocratic-meritocratic ideology, which uphold that success essentially depends on appropriate skills, knowledge, talents and abilities. The paper examines to trace the emergence of knowledge society in global context and analyses how and why the generation, dissemination and application of information becomes an integral part of knowledge society. It also explores the digital divide and accessibility of information and communication technologies (ICTs) and employment accessibility. The free flow of information and ideas has sparked an explosive growth of knowledge and its myriad new applications in the information age. Although this knowledge society offers many potential benefits to developing and developed countries but its access, dissemination and control carries, at the same time the real danger of a growing digital divide/gap among and within nations. The ODL system has emerged to be an important viable, mainstream and alternative mode of learning for larger sections of student population. In terms of use of advanced technology for learning, flexibility in the curriculum development, promptness to accommodate the latest developments in the leaning process; the ODL in India and other South Asian countries has emerged to be the provider of sophisticated from of education. Such transformation of*

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*learning as a process has produced diverse varieties of concerns, challenges and opportunities for overall ODL system. Education in Indian society as a social process and an institution influences the processes of social progression, economic growth, political articulation, intellectual and human development and technological advancement of a society. Education also operates in time and space embedded socio-cultural, techno-economic and politico-administrative process, which widely influence its course and direction.*

**Paper Type:** Conceptual/Empirical/Critical

**KEY WORDS:** Globalization, Indian society, ICT, Digital Divide, Issues and Concerns.

## 1. Introduction

Globalization has widely influenced the economic, social, cultural and political institutions by introducing changes in the nature of work and organization of production. ICTs has shaped new productive forces; professional, scientific and technical and it has risen into prominence which include microelectronics, computing (machines and software) telecommunications, and opto-electronics etc. This has produced a new axial principle of the economy and society. In this knowledge society, information is treated as a commodity and possession of information gives more power to the owner. ICTs spur the creation of economic and social 'networks' of individuals and communities. The power of these networks is their ability to connect diverse groups by allowing them to access and exchange information and knowledge that is crucial for socio-economic development. Education is one of the most powerful resources in bringing about empowerment. In the context of the marginalized groups, it functions to facilitate occupational diversity and mobility and makes them aware of the rights and issues and enables them to assert for power, prestige and equality of condition. For centuries all over, marginalized groups have been exploited and deprived of equal status. Disempowerment is evident in the lack of their basic right to choose the way they want to live. In the face of prevailing traditions, they lack the real power to decide whether to work, what to work as, whom to work as, what to learn as and whose ideology to learn as, and a number of other related issues that have a direct bearing on their lives. A close relationship exists among social, economic, political and culture power in a society and the ways and means in which education is thought about, organized and evaluated.

Globalization and privatization are the major issues faced by the Indian Higher Education leading to commercialization and exploitation of the students of higher education. To overcome a crisis situation a search for alternatives continued. One of the major alternative that emerged is the growth and development of the open and distance education system. A technological medium replaces the inter-personal communication of conventional education, as two-way communication is possible for both the student and teacher. The teacher and learner are separated both in space and time. Bridging the distance and guiding the learning process is effected by means of specially prepared materials which may be delivered through various media - print, TV, radio, satellite and audio/video cassettes, CD-ROMs, internet and so on. For ensuring that the growth of this system is not only rapid but also healthy, there are certain critical issues that need to be addressed appropriately. These issues are critical in the sense because they have a direct bearing upon the healthy growth of the ODL system and its ability to achieve its goals. The process of globalization, information technology revolution and a paradigm shift in the development strategy have obviously accentuated the critical issues and concerns and as a force for imparting a transformative culture in society.

## 2. Education, Knowledge and Power: A Co - relationship

Apple (2004) shows that a close relationship exists among those who have economic, political and cultural power in society and the ways and means in which education is thought about, organized and evaluated. Thus education enhances the inequalities existing in an already unequal and stratified society. Schools do not function in isolation, having their own existence and work for the upliftment of people; rather schools are situated in the larger context and are influenced by other powerful institutions of society. Inequalities are reinforced and reproduced through the educational curriculum, pedagogy and evaluative activities. The dispositions and the attitudes that are developed among students are not neutral but they are selected, represented and organized in accordance with the powerful institutions of social control. Education is used as a means through which power is exercised and dominant groups use it to exercise control. The biased selections of knowledge followed by the deliberate representation favors the powerful section of society which ensures the subtle control of masses through the educational curriculum. Such control happens in the area of education that makes the power of the dominant groups legitimate and extremely difficult to challenge. Kumar (1992) refers this as 'quite, civilized dynamic dominance'. The marginalized people are economically poor, politically and culturally disenfranchised. The kind of education their children receive is completely different from the kind of education that the children of elite section receive. The schools and curriculum subordinate the interests of the exploited in favour of the interest of dominant classes.

Human advancement is closely associated with technological advancement. Contemporary society is witnessing revolutionary innovative advancements in the yield of technology, especially information and communication technologies (ICIs), which is characterized by phenomenonal expansion computer communication and electronic technology, ICT's tremendously increase the pace of globalization and these together make a far-reaching impact on every aspect of society including economic, social, cultural, political etc. A major outcome of this is the emergence of a knowledge society or information age where knowledge or information becomes the driving force for the all round advancement of humanity lifelong learning is an important dimension of the knowledge society. New skill and knowledge are required to be imparted to meet the changing need of this society. The inter linkages among globalization , ICTs, knowledge economic and education have not only thrown open new challenges to higher education, but also several opportunities that could be harnessed socially economically and politically. Thus there have emerged the flowing potential opportunities a) Using of education as tradable commodity b) Expand the boundaries of this trade all over the world. C) Institutionalize trade in education by creating new national and international arrangements. The new arrangements are those of the GATS and others. d) Extensive use of ICTs for the expansion of trade in education.

Education is a means of socialization whereby young members of society are trained to accept values, norms and belief system of the society. It breeds similarly of thought and action among the individuals and thus leads to a feeling of oneness and similarity of goals and values. Empowerment incorporates social privilege, power, prestige and influence and further, it incorporates issues of economic growth, economic quality and educational opportunity. Schools provide knowledge to fulfill a particular professional role and more importantly they foster the attitudes and behaviors consonant with the fulfillment of these particular roles. By encouraging certain personality traits and discouraging certain other ones, schools shape the personalities of pupils in accordance with the role capitalist society needs them to perform. Louis Althusser, a French philosopher views education as a part of superstructure, and argues that education provides ideological support to the ruler. Amartya Sen and Dreze (2002) on the other hand brought out the significance of education in terms functioning and capability. Functioning refers to what a person does and achieves. Capability, on the other hand refers to the range of choices and options which a person has in deciding the kind of life he wants to lead. Capability, therefore, is the real state of freedom that a person enjoys choosing from the alternative combinations of functioning. They refer to such a case as 'capability deprivation' which may be understand as a severe limitation of freedom and overall state of incapacitation to live and perform dignified labour.

## 3. Digital Divide in Knowledge Society

The 'digital divide' has created a knowledge gap between information rich and information poor peoples, which has the potential to give rise to a new form of 'illiteracy'. The 'digital divide' restricts information and knowledge diffusion and limits the opportunities for economic growth and wealth distribution. ICT's has spurred the creation of economic and social network of individuals and communities. The power of these networks is their ability to connect diverse groups by allowing them to access and exchange information and knowledge that is crucial for their socio-economic development. The 'digital divide' threatens to widen the already existing development gap between the rich and poor among and within countries. The majority of the world's people are not able to benefit from this revolution unless they are empowered to participate fully in the emerging knowledge - based information society. Internal divide is between digitally empowered rich and the disempowered poor; linguistic cultural divide between domination of Anglo-Saxon and the other world culture; divide in access of technology between the rich and the poor nation; and the divide between the values of ICT's driven affluent elite and conventional authority and hierarchies (Keniston, 2003). In UK, for example, only 4 percent of households in the poorest income quintile are connected to the Internet, compared to 43 percent in the top quintile; in USA, the proportion of Afro - American families that are connected is half that for white families (OECD, 2001: 149). In Korea, the number of households connected to the Internet in year 2000 doubled, raising the total to 3 million homes, whereas in Japan only 450,000 homes were connected. Among developing countries, the digital divide sets apart the technologically more advanced countries from the less advanced ones. Whereas a few African countries with small populations still lack even one Internet host, in Singapore 98 percent of households use Internet. In mid 1990's it connected 44000 computer networks and about 3.2 million host computers worldwide with an estimated 25 million users and it is expanding rapidly (Castells 1998). The evolution of microprocessor technology and swift advances in fiber optic network technologies resulted in rapid growth of computing power and the communication power of people around the world.

The Internet carries a combination of pictures, drawing, moving images, sound and text. The technologies of telephone and television, the radio and camera, the fax and world processor, the data base and the spread sheet all are integrated into one system, the Internet, which makes it unique in its capacity to support two-way interactions. Since early 1990s the World Wide Web (www) has become the mainstream environment for creating and disseminating the digital information.

**Table 1.1: World Internet Usage and Population Statistics in 2005.**

| World Regions | Population (2005 Est.) | Population % of world | Internet Usage Latest data | Usage Growth 2000-2005 | % population (Penetration) | World users % |
|---|---|---|---|---|---|---|
| Africa | 896,721,874 | 14.0% | 23,867,500 | 428.7% | 2.7% | 2.5% |
| Asia | 3,622,994,130 | 56.4% | 327,066,713 | 186.1% | 9.0% | 34.2% |
| Europe | 731,018,523 | 11.4% | 273,262,955 | 165.1% | 37.4% | 28.5% |
| Middle East | 260,814,179 | 4.1% | 21,422,500 | 305.4% | 8.2% | 2.2% |
| North America | 328,387,059 | 5.1% | 223,779,183 | 107.0% | 68.1% | 23.4% |
| Latin/America Caribbean | 546,723,509 | 8.5% | 70,699,084 | 291.31% | 12.9% | 7.40% |
| Oceania/ Australia | 33,443,448 | 0.5% | 17,655,737 | 131.7% | 52.8% | 1.8% |
| World Total | 6,420,102,722 | 100.0% | 957,753,672 | 165.3% | 14.9% | 100.0% |

Source: http://www.internetworldstats.com/stars.htm

## 4. Globalization, Education and Indian Society

Globalization and privatization are the major issues faced by the Indian Education leading to commercialization and exploitation of the students or learners. The modern system of education can be traced back to the establishment of three universities at Bombay, Calcutta and Madras in 1857. The British promoted higher education to produce manpower which suit the colonial administration. After independence in 1947, priorities for national development were drawn up and, accordingly, the objectives of higher education were formulated and the system was expanded and developed. At the time of independence, there were 17 universities and 400 colleges. Expansion during the last 50 years resulted in over 300 universities and more than 14,000 colleges with about 10.5 million students and around 0.35 million teachers representing one of the largest higher education systems in the world. Indian Education is confronted with many problems such as –lack of adequate infrastructure, relevance of the curriculum, quality of education provided, access and equity, resources etc. All the universities/colleges/ schools are not at one plane as for as infrastructural facilities are concerned and this situation seriously affects the quality of education provided and students produced by these institutions. When we talk of infrastructure in educational institutions we talk of land, buildings equipment, laboratories, libraries, personnel both academic and administrative their accommodation and hostel facilities etc. Looking at the number of institutions, teachers and students involved in education system facilities required are huge in terms of quantity and quality. The education institutions are mainly dependent on either central or state government funding. Recently privately funded institutions are emerging very fast. The older institutions need modernization of its infrastructural facilities, whereas the new ones have to start from scratch, both requiring a lot of resources. Government funding to these institutions is increasingly becoming difficult.

As large number of higher education institutions, both colleges and universities follow a curriculum developed long also without appropriate changes to suit the ever changing societal needs. In the process these institutions produce a large number of graduates. In general education courses –who are neither professional nor skilled to get a job in the market? Hence a large number of them remain unemployed. The picture is dismal particularly at the first degree level, whose enrolment accounts for 88% of the total enrolment for higher education. Out of this 80% represent general education programmes of Arts and Humanities, Social Sciences, Commerce and Sciences – products of diverse institutions marked by indifferent quality, irrelevant curriculum and lack of relevance to societal needs. Professional programmes at the first degree level represent 20% of the enrolment, whose relevance and quality is relatively better. The contribution of Indian universities is mainly to post-graduate education and research, with acceptable levels of quality and standards, but this segment represents only 12% of higher education enrolment, the remaining 88% belongs to undergraduate education with varying degrees of quality (Mukhopadhyay) 2001. Access and equity are the major issues which represents the most diverse social, economic and cultural settings in the world. India has the largest system of higher education with more than 300 universities and 14, 500 colleges catering to our 10.5 million students and 3.5 million teachers. This large network is catering to only about 6% the population in the relevant age group of 17-23 years. The main objective was raising this from 6% to 10% by the end of 10th plan i-e., 2007. This rate of participation in higher education is much less in comparison to develop countries (about 40%) and even to some of the developing nations (about 19%).

What about the rest of the population in the relevant age group? How to provide access to this large population to, democratize higher education?

## 5. Issues, Concerns and Challenges of Indian Education

In a globalized India while there have emerged areas of inclusion, there also exists a vast section as excluded from within. While most of the urban areas have been connected with the forces of globalization and ICT's network and a distinct category of elites has emerged there in as the ICT driven but others are excluded from ICT's access. In rural areas, ICT's have touched the upward mobile gentry, marginalized people such as agricultural labourers, tenants, poor peasants and the artisans have remained excluded. Even though India spends around 20 percent of total educational budget on higher education, of the total student population only 5.7 percent go to the colleges and higher level of studies. In terms of age group (17-24 years) only 7.0 percent attain higher education as against 92.0 percent in US, 52.0 percent in UK, 45.0 percent in Japan (UNESCO, 1999). In India, student enrolment in higher education has significantly increased in recent years from less than 0.2 million in 1950 to around 10 million by the year 2002. There have, however, been a very slow rate of increase of the marginalized groups such SC's, ST's and OBC's. There has been a nominal increase from 7.0 percent to 7.78 percent and 1.6 percent to 2.7 percent from 1950 to 2002 in case of SC's and ST's respectively. However, the percentage of girl's education in higher education has increased from 10.0 percent to 40.5 percent from 1950 to 2002 (GOI: 2001-02).

**Table 1.2: Digital Divide in India**

| Sate | Access to Electricity % house hold | Telephone connections per 100 people (2004) | Internet connections per 1000 people |
|---|---|---|---|
| Mahrashtra | 59.7 | 5.34 | 8.21 |
| Punjab | 83.5 | 10.86 | 1.24 |
| Kerela | 61.1 | 9.79 | 0.87 |
| Karnatka | 63.0 | 5.58 | 2.73 |
| West Bengal | 18.8 | 1.96 | 2.51 |
| Orrisa | 21.1 | 2.45 | 0.12 |
| Utter Pradesh | N.A. | 4.66 | 0.12 |
| Andra Pradesh | N.A. | 4.76 | N.A. |

**Source:** BalaKrishnan, 2001and observer statistical Handbook, 2005.

Educational concerns of Scheduled Casts (SC's) are of critical importance and their present educational status should be contextualized in the historical deprivation and denial of learning opportunities. Nambissan and Sedwal (2001) reveal how physical accessibility is always a problem for SC's. The numbers of schools available in a predominantly SC's habitation is much less when compared to a general rural habitation. As a result, SC's children have to go to upper caste habitation to be able to attend schools, which may not be accepting and welcoming them. Norms of purity and pollution still exist, and SC's children may find themselves in hostile conditions. National Council of Applied Economic Research (NAECR) in a survey reveals that in the mid - 1990's, only 41.5 percent of SC's in rural India were literate and 62.5precent of children in the 6-14 age group had been enrolled in schools at a certain point in time. National sample survey organization (NSSO, 1999) sources show that school attendance rate in rural areas in 1973-74 was 64.3 percent for SC's compared to 74.9 percent for other social groups. National Council of Educational Training and Research (NCERT), 1999 figures reveal that SC's constitute only around 11 percent of teachers at the primary stage, 9 percent at the upper primary stage and 5 to 6 percent at Secondary and Higher Secondary stage. The poor performance can be attributed to the lack of structural and pedagogical support that these SC's face. The continuing economic vulnerability makes it all the time more difficult for them to be able to invest time and resources in the educational enterprise.

Scheduled Tribes (ST's) lag behind all other marginalized groups (and way behind the national average) in education. Given the diverse locations of tribal population, the disparity among states in terms of tribal literacy does not come as a surprise. While most of the north-eastern states like Kerala and Himachal Pradesh have achieved satisfactory level of tribal literacy rates, educationally backward states like Rajasthan, Bihar and Andhra Pradesh makes the over-all picture highly discouraging. Drawings on the data of the 5th and 6th All India Educational Survey, Sujatha (2001) insists that in almost all tribal populated areas, the number of school within 1km habitation have increased but difficult terrain and hilly regions make the distance of even 1km hard to cover considering the fact that children are expected to go to school and come back home on a daily basis. The fact is that at least 10 percent of tribal habitations have primary schools beyond a distance of 2kms, it shows how schools remain inaccessible to these children. An enrolment rate among tribal population is another disturbing feature. In 1997-98, the overall figures of enrolment were only 43 percent which is far behind the national average. A similar trend is found in the upper primary and secondary levels of schooling and due to high dropout rates among the tribal children, schools fail to retain them. Centralized curriculum represents yet another issue. Krishna Kumar (1989) maintains that centralized curriculum reflect the culture and social existence of the mainstream groups. It fails to draw upon the factors, objects, experiences and issues, which the children of marginalized groups live with it. It therefore, does not talk about the socio-cultural lives of these children. On the one hand such a curriculum fails to relate to the knowledge base of the students who find it irrelevant and meaningless, and on the other, it also affects their self identify and feeling of self-worth in a negative way.

Census of India 2001, shows female literacy rate as 54.16 percent as against males which is 75.85 percent. Literacy rate of women is not uniform in all states of India and even within states there is variation from one district to another. Chanana (2000) explain that this gap is wider in educationally backward states like Bihar, Madhyapradash, Orissa, Rajasthan etc. Furthermore, SC and ST Women seem to be worst victims, for they show lowest literacy rates. Female literacy among SC is 23.76 percent as compared to 49.91 percent among the males. The corresponding percentage among ST females is 18.19 as compared to 40.65 among the males (NCW, 1994). Data reveals poor literacy rates for rural women, as compared to their urban counter-parts. Not only does it confirm the high disparity among women but also reveals that a large number of women have reached adulthood without access to basic literacy and innumeracy skills. This makes one ponder over the education status of young women and the girl child. Ministry of Human Resource Development (MHRD) 2001, conclude that a fairly strong gender focus has resulted in a gradual improvement enrollment figure for women at both primary and middle levels of schooling. There is reduction in the enrolment figures for females, as one move from primary to middle to higher stage of schooling. While the percentage of girls in school enrolment in primary stages in the year 1997-98 is 43.6 percent, the corresponding figure for middle stage is only 40.1 percent. One can, thus, conclude that women retention is low, and they find it more difficult to complete schooling or reach for higher levels of education.

The higher education in India has faced numerous challenges and this has led to the development of open and distance learning (ODL) all over the world. In spite of tremendous expansion of higher education, demand is increasing and the existing network of higher education is not in a position to accommodate the growing demand. This led to search for alternatives in the form of distance learning by the central and state governments and private institutions. Accordingly the government set the target of 40% of higher education students to be accommodated is distance learning institutions in the 10th plan. The participation rate in higher education of the eligible are age group is about 6% only; to raise it 20% as planned by the government and to provide access to various group and communities, existing institutions alone will not suffice. Hence one of the major alternatives is distance and open learning. Relevance and quality are two important issues faced by higher education institutions particularly at the undergraduate level. Many of these institutions could not diversify their programmes and improve their quality at accepted levels with increasing competition from within and outside due to globalization most of the existing higher education institutions are forced to be innovative and change their practices, operations and ultimately nature of academics programmes. In this process most of the institutions are using information and communication technologies, the concept of continuous professional development (CPD) and lifelong learning, quality benchmarking and development of linkages and partnerships with other agencies and institutions.

## 6. Emergence of Open and Distance Education in India

Demand for education is increasing and the existing network of higher education is not in a position to accommodate the growing demand. This led to search for alternatives in the form of distance learning by the central and state governments and private institutions. Accordingly the government set the target of 40% of higher education students to be accommodated is distance learning institutions in the 10th plan. The participation rate in higher education of the eligible are age group is about 6% only; to raise it 20% as planned by the government and to provide access to various group and communities, existing institutions alone will not suffice. Hence one of the major alternatives is distance and open learning. Relevance and quality are two important issues faced by higher education institutions particularly at the undergraduate level. Many of these institutions could not diversify their programmes and improve their quality at accepted levels with increasing competition from within and outside due to globalization most of the existing higher education institutions are forced to be innovative and change their practices, operations and ultimately nature of academics programmes. In this process most of the institutions are using information and communication technologies, the concept of continuous professional development (CPD) and lifelong learning, quality benchmarking and development of linkages and partnerships with other agencies and institutions.

In the present era of globalization and ICT's revolution, there have been tremendous efforts by the ODL institutions to integrate the learning process with e-learning in particular and ICTs in general. These processes have unfolded several new opportunities of learning but they have also produced new challenges, issues and concerns for society, academic institutions, teachers and learners. Initially ODL was seen as progressive ideology, marginal system to serve the educational interest predominantly of the marginalized population and stood for individual learner's autonomy. However, over the years it has emerged to be a market driven mainstream educational institution which is amenable for political maneuverings of the state. In general higher education is experiencing a shift from supply driven to demand driven pressures. This has been mostly because of the challenges encountered by the ODL from the forces of globalization and ICT, competition from new providers and the increasing drive for self-sustaining education. There has emerged a trend to market the education through the distance education mode even in the conventional universities. In many cases ODL is getting transformed from quality driven and marginal to commercially oriented and mainstream. There are both the opportunities and dangers in these developments.

The huge profits earned though ventures in the field of distance education are bringing entrepreneurs from the western world to the developing nations with huge student population eager to possess degrees from abroad. There is an emergence of a global market where education especially that provided through the distance mode is being traded as a commodity. Education serves as commodities that are prepackaged and delivered at home by the multinational companies. These prepackaged educational services are produced through mass production techniques, whereby the students become the customers and the teachers as workers. Greville (2000) reveals that the commercial approach of some ODL institutions with fewer concerns for student support is responsible for the high dropout rate. Through General Agreement in Trade and Services (GATS), the distance education institutions are adopting a multinational approach in providing educational services. Developing countries are finding it difficult to compete with the developed countries because of their inadequate infrastructure and poor economic development.

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# QUALITY OF TEACHER-STUDENT INTERACTION AT UNDERGRADUATE LEVEL

## (*A PERCEPTUAL STUDY OF FACULTY AND STUDENTS IN J &K*)

**Mushtaq A Siddiqi***

## ABSTRACT

*The study presents the findings of an exploratory study to highlight student experiences about the technical as well as functional aspects of teacher-student interaction in an educational setting at undergraduate level. While reviewing literature on service quality dimensions, the paper seeks to establish the fact that physical environment in which services are offered; service providers' knowledge; skills; and attitude are among the vital components, any educational setup must focus upon to improve its quality of teacher- student interaction. The study reveals the factors that have affected the quality of interaction as perceived by the students and the faculty. More specifically, it is observed that students generally perceive more positively about the technical rather than the functional qualifications of their faculty. Evidenced by analysis of teacher-student perceptual gaps, it is observed that barring 'knowledge' of their teachers, the students doubt and challenge the high claims made by the faculty. Finally, the paper concludes with the strategic actions that the author believe, would help academic administrators to achieve excellence in the quality of interaction and consequent service quality at the level under investigation.*

**Key terms: Interactivity; undergraduate level; technical qualifications, functional qualifications; J & K.**

## Introduction

like most services, quality in an education setting also occurs during a 'service encounter', which is referred as a period of time during which a service user directly interacts with a service delivery system (Shostack, 1985).To put it other way, it refers to student's interaction with higher education's product, which include student's academic social, physical and spiritual experience in an education set up. However, one important dimension of student satisfaction that influences their service quality perception is the quality of interaction; they experience with the faculty members. This justifies dedicating the present research effort to explore the teacher-student interactive features. Further, the essence of interactivity is supported by service marketing literature as well. This is in view of the several grounds. First; the ultimate aim of a service encounter is derived from this interactive process. *Second*, the interactive process exerts its impact on the service provider's delivery, as well as on the service recipient's evaluation. *finally*, the interaction process continuously influences the service provider's and the service receiver's expectations and perceptions of service at hand in service encounter. In short, the better the interactive process, the better the out come that may be achieved in the service encounter.

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Thus, the focus of the present study is to investigate the quality of interaction in an education set up. The interactivity encompasses all aspects of the institution with which the students may interact...... including its faculty, their skills, knowledge, attitude and the physical environment in which the services are offered. In the following sections, the components that are involved in the teacher student interaction are briefly discussed from service marketing perspective.

## Servicescape

Ward *et al.,* (1989) explain that in the studies of faculty office designs, students belief about the persons occupying the offices and their personality traits were found to be influenced by such cases as degrees or certificates on the wall, tidiness of the office and desk placement. In fact, the physical environment and access to facilities speak about the institute's intention and capacity to offer services in a professional and organized manner (Mahmood, 2001). The tangible facets of the service facility (such as equipments, machinery or the physical environment in which services are rendered) strongly influence customer perceptions of quality (Booms and Bitner, 1982), particularly when the core service is more intangible (Schneider & Bowen, 1995). An exploratory study of Zeithaml *et al.,* (1988), revealed that service quality shortfalls also results from lack of technology. In education setting physical layout and access to these facilities has been recognized as one of the potential determinant of service quality by number of authors (Mahmood, 2001), who also argues that these facilities are integral to academic achievements.

However Gibbs (2001) worries that consequent upon the greater use of technological based learning, the students-teacher relationship will get adversely affected .This is because it is considered to be far more difficult to impart enthusiasm and passion through a computer programme than it is with face to face contact (Nixon *et al.*, 1998). Another study conducted by

Sureshchandar *et al.,* (2001) resulted in a note worthy observation with regard to Servicescape that the same physical setting that communicates with and affects customer perception of service might also affect service providers(faculty in education set up) of the firm. Emphasizing the significance of physical infrastructure in service organizations, Varadan (1991) stresses that maintenance of such facilities should get more importance than setting up the facilities.

## Skills

Employee skills have become a critical source of differentiation, satisfaction and hence a source of client retention. This is due to the fact that the personnel operating at the "boundary" between the firm and the external environment are the ones who have an opportunity to mix and remix the service offerings and add value in interaction with their clients(Sharma and Patterson, 1999).Besides job skills, there are number of other specific skills which enable an employee to adapt him/herself as per the demands of an interaction e.g., social skills---focuses on the service employee's ability to take the customer's perspective during interaction(e.g., Flavell *et al.*,1968).More specifically such perspective can take place visually(i.e., employee understands what the customer sees and perceives), cognitively(i.e., the employee understands what the customer thinks),and emotionally(i.e., the employee understands what the customer feels)(Flavell *et al.,*1968).Regarding inter- personal skills there is a general agreement among researchers that communication skills are one of the essential with the assumption that a service employee has to express himself, communicate and assure the customers and all this makes communication skills a prerequisite(Sisodia and Chowdhary,2005). Good listening skills is another important skill the service provider must posses for customers expect to be attended, shown respect and not left ignored at any point of time.

## Knowledge

Students' quality of educational experience is influenced by teacher expertise in the class room. They look for knowledgeable and enthusiastic individuals who care about their learning and help them as individuals to move their knowledge forward (Hill *et al.,* 2003).Knowledge is the foundation stone for success in long term interaction. Argyle (1967) refers it to the technical and motor skills which a service employee must possess in order to fulfill the customers' needs during the personal interaction process. Employees' knowledge has a positive and significant impact on customer satisfaction and other service variables. A number of authors (e.g., see Sisodia and Chowdhary, 2005) have referred it as job skills, particular or special trainings which are more technical in nature and are essential for performing one's job. Sahaf (2002) referred it as key recourses, power, having no other substitute and without which a salesperson may find it difficult to make the best use of sales opportunity. However countless authors argue (e.g., see

Gronroos, 1984) that technical qualification is a necessary but not sufficient condition for higher levels of service delivery.

## Attitude

It is free, positive, sincere attitude with a strong commitment to one's job to really provide the touch of service to others in true sense. Attitude is a psych that is manifested in instinctive tendencies which determine as to how an individual would organize and present oneself in a given situation. Going by this definition, attitude is what a person's natural self tends to be; and represents his/her favorable and unfavorable evaluations (Sisodia and Chowdhary, 2005).An employee possessing sufficient knowledge and skills cannot be successful unless he possess right kind of attitude to put that knowledge, skill etc., into use (Sahaf, 2002). In most service businesses, services are delivered during the interaction, employees' attitudes and behaviors towards customer determine customer's perceived service quality, satisfaction and performance (Sisodia and Chowdhary, 2005). In fact, for a service organization, quality control of employee attitude is pretty much the equivalent of product quality control for a manufacturer. Though research indicates that skills can be upgraded through training, but it is difficult for people to change the mindsets of the people (Jauhari and Venkatesh, 2005).However results from various training programmes also indicate that attitudes can be improved dramatically (e.g., Singh, 1998).

## Rationale and Scope of the Present Study

Within service sector, education has been instrumental in growth and development of India in the post independence era to an extent that at whatever state the country is placed today, a major credit for the same could be attributed to the educational institutions (Jain and Bandyopadhyay, 2001).But surprisingly, this service sector has almost been left out by the researchers from service marketing field. Huge funds, both from the state Govt. and the University Grants Commission have been spent & shall continue to be spent in this crucial sector of the economy at higher education level. However, the output quality of the system happens to be disproportionate to the inputs and is often challenged. The problem therefore, lies in identifying both the human and non human factors that affect the service delivery including quality of interaction at this level. The authors' hypothesis is that the students of the system at this level perceive more positively about the technical rather than the functional aspects of the service delivery.

Within higher education, the college education is mostly university preparatory; most of the students who complete graduation enter universities and form part of input for universities. Moreover the students have to spend more time in graduating at colleges than in specializing in universities. Therefore, the quality of output from universities cannot be improved in the absence of quality input from colleges. This justifies the relevance and necessity to dedicate the present research efforts at the college level. It is in this context, using data from Kashmir division of the state of Jammu & Kashmir, the present exploratory study aims to examine all those factors that are related to students' perception or satisfaction about their interaction with the faculty in the prevalent college education set up. Further, the paper concludes with the strategies, organizational policies, practices in an education setup that need to be reoriented to improve both the technical as well as functional aspects of the service provider with an aim of improving the over all quality of interaction and consequent students' satisfaction

## Research Methods

To assess the quality of interaction between teachers and their students, a questionnaire survey was conducted. The basic issues concerning the study's research design and methodology are discussed bellow:

## The Sample

The study, an exploratory in nature, was conducted in the Kashmir division of Jammu & Kashmir. The selection of the respondents was governed by the principles of proportionate stratified sampling. The study covered a students' sample of eight hundred seventy five (875), of which 41% belong to urban and rest from rural, all representing as many as five districts of the Kashmir division. Female students represent 45% of the sample. Each class of the three year degree course is given due representation in the sample. As many as 43% of the students have been drawn from the arts, 46% from science, and rest from the commerce stream. The size of the faculty sample was restricted to one hundred eighty-nine (189) or 30% of population in the division, who represent five districts (both urban and rural) of the division. The teachers' sample represent 38% of females, 48% from arts, 40% from science, and rest from the commerce stream .The faculty sample consists of 70% with post graduation, 20% with M. Phil, and rest with Ph.D. The response rate was as high as 69% for college teachers, 89% for students. In addition, the secondary data has been obtained from the file records of the constituent colleges, department of higher education, and affiliating university.

## Questionnaire and its Validation

The items used for the present study were generally based on extensive review of literature on service quality dimensions and interactivity. These items were then classified into four categories like Servicescape; Skills, Knowledge; & Attitude. (*See the details of items in appendix).*A common questionnaire was used for both the teachers, and the students to cross check the respective perceptions. Lickert's popularly known as Lickert's type technique was applied throughout this study. Responses to items were scored in such a way that a response indicative of most favorable was given the highest score and vice-versa (strongly disagree = 1, strongly agree = 5).As scales used in this study were modified to suit the purpose of the study, it was necessary to test its validity and reliability, without which it was difficult to know whether the scales actually measure what they were supposed to. The dimensions and items developed for the study were presented to two college principals, two college lecturers, and two scholars of service marketing to critically evaluate the same from the stand point of domain representative- ness, item- specificity, and clarity. Based on the feedback desired changes were made to ensure the face and content validity.

## Pilot Study and Reliability

A pre-test was conducted in two-degree colleges, one urban (Gandhi Memorial College, Srinagar.); the other rural (Govt. Degree College, Baramulla), comprising of sixty four (64) participants (comprising of both the faculty and the students). Both the teachers and the students were asked to complete the questionnaire and were requested to indicate any ambiguity or other difficulty they experience in responding to the items as well as any suggestions they deemed fit. Table 1 reveals that excepting with the coefficient alpha of 'Knowledge', which is still acceptable (0.69) because of being slightly bellow the recommended alpha level of 0.70(Nunnally, 1978), the overall results obtained through the above tests ensured reliability of the scales.

**Table 1: Reliability coefficients**

| *components* (1) | *Coefficient alpha* (2) | *No. of items* (3) |
|---|---|---|
| 1. Servicescape | 0.72 | 03 |
| 2.Skills | 0.83 | 06 |
| 3.Knowledge | 0.69 | 06 |
| 4.Attitude | 0.82 | 06 |
| **Overall reliability** | **0.82** | **21** |

*Source: Survey data collected by the scholar for the present study*

## Analysis and Results

The basic statistical tools to measure various dimensions were mean, percentage of mean score, and standard deviation. Prior to analysis of the data, the past researches done in the field were studied thoroughly to follow a standards pattern of analysis. To make the analysis of data easier, the mean scores were converted into percentages through a simple formula X x 20: e.g., the mean score of any item is 2.5 in the five point scale,then,2.5x20 gives a percentage mean score of 50.As the scale used was Lickert's five point(minimum:1; maximum:5), a mean score of 1 corresponds to 20%,2 to 40%,3 to 60%,4 to 80%,and 5 to 100%.The percentage of mean scores secured by various items and elements were then classified and interpreted in the following manner:

| *%age of mean score of* | *Interpreted as* |
|---|---|
| < 50% | Poor |
| 50 to <60% | Moderate |
| 60 to <80% | High |
| 80% and above | Excellent |

The item wise analysis helped to identify most critical areas where the organisation must look into on priority. All the items were also classified into three categories based on the %age of agreement levels associated with each of them in the following manner:

| *Items agreed by* | *Classification* |
|---|---|
| up to 30% of the | Poor acceptance range(poorly agreed) |
| >30 to 70% of the | Moderate acceptance range(moderately |
| above 70% of the | High acceptance range(highly agreed) |

The survey data, based on the perception of both the teachers and the students about the dimensions under study, have been compared with the help of mean scores, percentage of mean scores, and Z tests wherever required.

## Findings

An over all picture of teacher-student interaction along with the details of its components based on the perception of students is reflected in Table 2 An overall average of 2.88 (ranging in-between 2.32 to 3.47), falls well within the moderate range

**Table 2: Overall Interactivity and students' perception**

| *Sl.No* (1) | *Components* (2) | *No. of items* (3) | *Mean score* (4) | *% age of mean score* (5) | *Standard deviation* (6) | *Ranking* (7) |
|---|---|---|---|---|---|---|

| | | | | | | |
|---|---|---|---|---|---|---|
| I- | | | | | | |
| | | 3 | 1.97 | 39.4 | 0.076 | 4th |
| II- | Servicescape | | | | | |
| | Skill | 6 | 2.59 | 51.8 | 0.502 | 3rd |
| III- | Knowledge | | | | | |
| | Attitude | 6 | 3.58 | 71.6 | 0.345 | 1st |
| | **Overall interactivity** | | | | | |
| IV- | | 6 | 3.39 | 67.8 | 0.502 | 2nd |

*(Source: Survey data collected by the scholar for the present study.)*

(50 to <60%) of mean score in percentage. In an attempt to study the issues of interactivity in more depth, its components are taken one by one bellow:

## Servicescape

Among the components of interactivity , 'servicescape' is the only, which has secured the lowest ratting from the respondents, a mean score of 1.97(ranging from 1.89 to 2.04) with a standard deviation of 0.076, ranking 4th among the components, thus require a fairly large degree of upgrading. It is not only the overall mean score of the component, but all the respective mean scores of the constituent items are also lying within the poor range (<50). The summary Table 3 well suggests that this is the only facet of interactivity where almost all the items are so poorly ratted by the respondents that all of them fall in the poor acceptance range.

## Skill

Table 2 indicates that this component secures overall mean score of 2.59(ranging from 2.29 to 3.61) with a standard deviation of 0.502, falls well within the moderate range (50% to <60%).While facilitating the interaction, it however, ranks 3rd among the four components of interactivity, based on students assessment. Six (6) items measure the component, whereby excepting with one item (with a mean score of 3.61) measuring teachers' communication skills, all other items are falling within the poor range (<50%).Table 3, later in this paper clearly reveals that of the six(6) items, only one item, measuring communication skills of the teachers, falls within the high acceptance range(>70%) and rest of the five (5) items fall within the poor acceptance range(up to 30%).

## Knowledge

Table 2, while presenting an overall picture of interactivity, indicates that this component, securing the highest mean score of 3.58 with a standards deviation of 0.345, falls well within the high range (60 to 80%). All the six (6) items (ranging in-between 3.05 to 3.81), measuring this component are far above 50%. However Table 3,while presenting summery results reveals that of the six(6), three items are in a high acceptance range(>70 to 100% of the respondents agreeing with the statements),and the remaining three have had a moderate(>30 to 70%) range of acceptance. Unlike other components of interaction not a single statement is lying within the poor range of acceptance, thus illustrates the fact, as hypothesized that the students of the system under study perceive more positively about the technical rather than functional qualities of their teachers.

## Attitude

Based on students' opinion 'attitude' ranks 2nd among the four (4) components of interactivity under study. It has received a mean score of 3.39(see Table 2) with a standard deviation of 0.502, falling well within the high range (60 to <80%).Six items measure the component whose mean scores range in-between 2.10 to 4.43(from 42 to 89%) in five point scale. Of the six, only one item-"the teachers are readily available, approachable when ever their students look for them in college" with a mean score of 2.10, falling within the poor range (<50%) requires substantial attention of management.

Summarizing the student's responses, Table 3, facilitates us to understand more precisely about the teachers' attitude that of the total six (06) items, measuring this component, four (4) items fall within the high acceptance range, whereas one (1) item fall within the moderate and only one as mentioned above fall within the poor acceptance range.

**Table 3: (summery Table) Statements of Interactivity and respective agreement levels.**

| (1) *Components* | (2) *No. of items in a range of poor acceptance. Agreed by (Up to 30% of the respondents.)* | (3) *No. of items in a range of moderate acceptance. Agreed by (>30 to 70% of the respondents.)* | (4) *No. of items in a range of high acceptance. Agreed by (>70% of the respondents.)* | (5) *Total no. of items* | (6) *%age of mean score* |
|---|---|---|---|---|---|
| | | | | | 1.97 |
| 1. Servicescape | 03 | | | 08 | 2.59 |
| 2. Skill | 05 | nil | nil | 06 | 3.58. |

*(Source: Survey data collected by the scholars for the present study.).*

## Perceptual Gaps

Table 4, revealing an overall faculty-student significant perceptual gap of 14.2%, p value <0.05, indicates the most wide gap (22%) in science stream followed by arts and commerce. And with regard to perception about servicescape, science stream indicates again a most wide gap of 27.2% followed by commerce (17.8%). Noticeably, the perception of teachers from arts stream is in line with that of their students as no significant difference (7.2%) exists in between the two.. This is perhaps due to least involvement of the students with lab equipments, practical assignments in arts stream. Therefore, we can sum up that the equipments particularly in science stream, needs large degree of improvement to facilitate the interactivity in question.

Another note worthy observation about the component –"skill" is that the students of commerce stream do not differ with their teachers' perception as significantly (a difference of 11 %,) as do the students of other two streams. (See stream wise perceptual gaps in coloum-5 of the Table 4).The highest mean score difference (in %ages) is found in science (40.2%) followed by arts stream (26.8%). Although the overall teacher-student perceptual gap as well as the mean scores of high range about 'knowledge' is not proved statistically significant (a mean difference of 4.4%only,p value = 0.83), the science stream reveals a considerable gap of 12.6% ). Therefore keeping in view the non significant overall perceptual gap, one can conclude that both the students as well as their teachers unanimously appreciate and express satisfaction over knowledge level of the college teachers. Finally, about the 'attitude', stream wise analysis indicates close association in-between commerce teachers and their students (a mere difference of 6%) as compared to the other two streams. However the overall teacher-student perceptual gap about 'attitude' is significant at <0.01.

**Table 4: Interactivity and summery table of stream wise teacher-student perceptual gaps**

| *S.No* (1) | *Stream* (2) | *Respondents* (3) | *Servicescape* (4) | *Skill* (5) | *Knowledge* (6) | *Attitude* (7) | *Total* (8) |
|---|---|---|---|---|---|---|---|
| 1- | Arts. | Teacher: | 48.2 | 74.6 | 70.6 | 72.6 | 66.6 |
| | | Student: | 41.0 | 47.8 | 73.8 | 61.4 | 56.0 |
| | | **Gap:** | **07.2** | **26.8** | **+03.2** | **11.2** | **10.6** |
| 2- | Science. | Teacher: | 58.2 | 86.8 | 80.4 | 83.8 | 77.4 |
| | | Student: | 31.0 | 46.6 | 67.8 | 74.6 | 55.0 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | **Gap:** | **27.2** | **40.2** | **12.6** | **09.2** | **22.4** |
| 3- | Commerce. | Teacher: | 64.0 | 72.0 | 77.0 | 74.0 | 71.8 |
| | | Student: | 46.2 | 61.0 | 73.2 | 67.4 | 62.0 |
| | | **Gap:** | **17.8** | **11.0** | **03.8** | **06.6** | **09.8** |
| 4- | Overall | Teacher: | 56.8 | 77.8 | 76.0 | 76.8 | 71.8 |
| | | Student: | 39.4 | 51.8 | 71.6 | 67.8 | 57.6 |
| | | Gap: | **17.4**<br>**(0.000)*** | **26.0**<br>**(0.001)**** | **04.4**<br>**(NS)** | **09.0**<br>**(0.003)**** | **14.2**<br>**(.020)***** |

*(Source: Survey data collected by the scholar for the present study.); P values are in parenthesis Note:* <0.0001; ** <0.01; *** < .05; NS not significant.*

## Conclusion and Recommendation

To sum up the analysis of the present study, the results lead us to authenticate the fact that servicescape appears to be the most poorly reported component both by the teachers and the students. Moreover, all of its items fall within the poor range of acceptance (see Table 3). The second most week component, according to the students is teachers' skills, which is however not supported by the teachers self evaluation, thus results into a most wide perceptual gap in between the two. The figures in Table 3 suggest that almost all the items measuring 'skill' fall within the poor range of acceptance. 'Knowledge' is the only component that is highly ratted by both the teachers as well as their students with almost no perceptual gap. Again not a single item that measures 'knowledge' falls within the poor range of acceptance (see Table 3), thus the hypothesis that the students of the system under study perceive more positively about the technical rather than functional qualifications of their teachers, has found an ample evidence .Conversely the poor ratting of functional qualities of these service providers particularly 'skill' provides further support to the hypothesis.

With regard to teachers' 'attitude' excepting one item, all are well agreed by the students(see Table 3),thereby taking its %age of mean score to 67.8%, indicates by and large a high degree of satisfaction among students. The overall interactivity is moderate (%age mean score of 57.6%).The corresponding perceptual gap of 14.2% among the two main respondent groups can well be attributed to poorly ratted components like 'Servicescape' and 'teachers skill' by students. Again the same interpretation seeks support from Table 3 that of the total nine(9) poorly accepted items, dealing with interaction, as many as eight(8) items pertain to 'servicescape' and teachers 'skills'. In total, of the twenty one (21), some eleven (11) items, those which are either in moderate or high acceptance range pertain to 'knowledge' and 'attitude'.

Among the three streams, barring 'attitude', students of science have expressed most negatively about their experience with the teachers, more specifically they seem to be suffering the most in the absence of sufficient physical infrastructure(31%), the lowest %age of mean score among the three streams.

In order to improve the quality of services, the management needs to put an extra emphasis on teachers functional qualities like their attitude, skills in teachers' appraisal scheme and link the same with their vertical mobility. The students' opinion must be given some room in teachers' appraisals. It would be enough wise if the identified service gaps based on students' judgment are converted into contents of training on a regular basis. As mentioned earlier the teaching aid equipment and infrastructure facilities is the most poorly rated component and by implication the system has a long way to go in upgrading such facilities. This is particularly in the areas like reprographic facilities, audio-visual aids and comfortable seating arrangements in classrooms and labs, external communication like internet, and other accessibility facilities in libraries.

However, the management will face practical difficulties in fully implementing the suggestion in one go for it would envisage huge financial inputs, obliviously not an easy affair for being one of the nation's economically backwards states. Therefore, some alternative suggestions also deserve to be considered: The education set up at 10+2 level is required to be vocationalised, diversified and career oriented and at the same time more rigorous standards of admission at the entry level of undergraduate education is need of the hour, which will steadily divert more and more students into terminal vocational courses and consequently the overcrowding driven issues in colleges can be eased out to a considerable extent. At least the open door admission policy at the undergraduate level should be considered for revising. In bigger colleges of the state especially those of located in urban areas, the enrollment can be divided into two shifts. This may result in usage of same buildings, space and other infrastructure facilities and seems to be very practical measure that can ease the situation as a result of overcrowding in these colleges. However, it would envisage a little adjustment in manpower policy of the organization. Further, additional work can be managed from the same workforce with supplementary benefits till a matching infrastructure facilities are gradually arranged for.

The solution to the problem under study can be many and varied. It can only be solved when authorities take appropriate decisions and measures in the light of above mentioned recommendations and see to it that these decisions are properly implemented. Further, the follow up actions are more vital than taking any decision. Finally, if the management is firm, it may not be that much hard to improve the teacher-student interactivity and and attain the objectives for which it has been established.

## Appendix

## Questionnaire

SERVICESCAPE

01. *we have sufficient number and latest equipments which facilitate the teacher-student interaction*
02. *The class room environment---space, furniture, desk arrangements, teachers' dice, writing board, etc., is comfortable.*
03. *There are no environmental disturbances like noise, over-echoing, bad smell, poor ventilation, etc in the classrooms.*
04. *SKILL*
05. *The teachers of our college are technically sound and are able to handle all the latest teaching aid equipments*
06. *The teachers of our college deliver lectures in the class room in an appropriate and simple language usually understandable to below average, average and above average students.*
07. *The teachers of our college listen to students with patience and understand their difficulties.*
08. *The teachers of our college interact with the students in a manner that makes the students feel comfortable*
09. *The teachers of our college are good in communication and do communicate whatever they want to.*
10. *The teachers of our college are able to utilize their knowledge.*

KNOWLEDGE

11. *The teachers of our college are enough knowledgeable to answer the students' questions and to clear their doubts.*
12. *The teachers of our college solve students' academic problems, right the first time in class room or labs.*
13. *The teachers of our college are familiar with the latest developments in their respective academic fields.*
14. *The teachers of our college seem to be well prepared before coming to class.*
15. *The teachers welcome students' questions both in and outside the class room.*
16. *The teachers of our college instill confidence and trust in the students.*

ATTITUDE

17. *The teachers never seem to be too busy or pre-occupied to respond to the students.*
18. *The teachers are polite and show respect towards students.*
19. *The teachers are honest, fair, and treat all the students at par.*
20. *The students of our college are satisfied with the attitude of their teachers.*
21. *The teachers in our college seem to be sensitive to learning related matters of their students.*
22. *The teachers are readily available, approachable when ever their students look for them*

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# RIGHT TO EDUCATION: HISTORICAL PERSPECTIVES

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## ABSTRACT

*After India's independence , when the founding fathers first recognized education under the directive principle of state policy (DPSP) as the* state *shall endeavour to provide within a period of ten years from the commencement of this constitution for* free and compulsory education *for all children until they complete the age of fourteen years (Article 45), this was the only article in the constitution to have a concrete time frame of ten years. Several committees and Commissions have been set up to monitor the status and to make improvement in the field of Elementary Education. The present Act has its history in the drafting of the Indian constitution at the time of Independence but are more specifically to the Constitutional Amendment that included the Article 21A in the Indian constitution making Education a fundamental Right. This amendment, however, specified the need for a legislation to describe the mode of implementation of the same which necessitated the drafting of a separate Education Bill. The rough draft of the bill was composed in year 2005. It received much opposition due to its mandatory provision to provide 25% reservation for disadvantaged children in private schools. In this paper, the suggestions and recommendations of different commission related to free and compulsory education have been analysed as an educational point of view. This Right to Education Act 2009 has also come into force w.e.f. 1st April 2010. One of the most contentious issues related to the RTE has been finance perhaps this constraint prevented constitution makers to list education under directive principle and culmination into RTE Act delayed to this extent. In this research paper, we will be highlighting various policies leading to RTE Act 2009. In this paper, the*

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*recommendations of NKC (National Knowledge Commission) on right to education have been analysed also.*

**Keywords:** RTE Act, Committees, Recommendations, History

## Introduction

Since Independence, India has made impressive progress in terms of growth of educational institutions at different levels, physical access to schooling for children, and diversification of educational programmes. Today, 18 crore children are taught by almost 57 lakh teachers in more than 12 lakh primary and upper primary schools across the length and breadth of the country. It is the tough hour for policy makers and teachers how to shoulder the expectation of the country through RTE act, 2009. At the time of independence, the creators of the Constitution of India wanted every child up to the age of 14 to enjoy the right to have enrolment in education by the 1960's. Yet this intent was passed as Article 45 under Directive Principles of State Policy, which "are not enforceable by the courts". The original Article 45 of the Constitution "seeks to provide free and compulsory education for all children up to the age of 14". Although the Constituent Assembly of India said we would be "cheating the nation" by not providing education to all, 60 years down the road we yet are to accomplish this fundamental goal.

As Article 45 did not accomplish providing education to all children up to the age of 14, the year 1968 saw education again on the agenda with the formulation of the National Policy on Education of 1986 that laid out guidelines for 'status, emoluments, and education of teachers' and 'development of languages' and also 'equalisation of educational opportunity' etc. Then in the mid eighties, then Prime Minister Rajiv Gandhi set up a committee to review elementary education. This committee drafted the "Challenge of Education: A Policy Perspective" which was the forerunner to the "National Policy on Education 1986 (NPE)". If this policy had been enacted in 1986, "every child of 11 years in 1990 and of 14 years in 1995 would be in school". The NPE had a detailed 'programme of action' for each clause in order to accomplish the goal of providing elementary education to every child.

In the early 1990's then Prime Minister VP Singh set up a new committee under the chairmanship of Acharya Ram Murthy, which reviewed the 1986 NPE. This committee made cosmetic changes to the 1986 NPE but did "extend the deadline of providing education to every child by the turn of the century." This was not accomplished. Next, the Sarva Shiksha Abhiyan was lunched , which said all children would complete eight years of schooling by 2010, but for that goal to be accomplished all children would have had to be enrolled by 2003. In 2002, BJP drafted the Right to Education Bill, 2002, which did not get passed in Parliament. Then during UPA tenure , the bill is reviewed by a the committee set up for it, and finally the historic act came into force on 1st April 2009.

## Some Features of RTE Act

Sixty-three years after independence, India Thursday, the 1st April 2010 enforced a historic Right to Education (RTE) act that promises freedom from illiteracy for this vast and diverse country. Following are the key points of the legislation that expects to empower the nation through education:

1. Free and compulsory education to all children of India in the six to 14 age group;
2. No child shall be held back, expelled, or required to pass a board examination until completion of elementary education (up to class eight);
3. A child who completes elementary education (up to Class 8) shall be awarded a certificate
4. Calls for a fixed student-teacher ratio;
5. Will apply to all of India except Jammu and Kashmir;
6. Provides for 25 percent reservation for economically disadvantaged communities in all private and minority schools. The reservation to start with Class One beginning 2011
7. Mandates improvement in quality of education;
8. School teachers will need adequate professional degree within five years or else will lose job;
9. School infrastructure (where there is problem) to be improved in three years, else recognition cancelled;
10. Financial burdens will be shared between state and central government on the basis of Sarva Shiksha Abhiyan (Education for All)
11. Private schools to face penalty for violating RTE.

## Historical Analysis of Policies Leading To Rte

There are several committees and commission have been set up to monitor the status and to make improvement in the field of elementary education. The suggestion and recommendation of different commissions related to free and compulsory education have been given below

In 1910, Gopal Krishna Gokhale moved a resolution in the Imperial Legislative Council that "a beginning be made in the direction of making elementary education free and compulsory throughout the country", which was opposed by the official side. A Bill to that effect moved by Gokhale on March 16, 1911 was thrown out. In 1917, Vithalbhai Patel was responsible for getting the first Law on Compulsory Primary Education in India passed by the Bombay Legislative Council. By 1930, every Province of British India had a law on primary education. But among the princely States, Baroda was the first to pass an Act for compulsory education of boys from age 7 - 12 and girls from age 7 - 10, in 1906.

The introduction of Provincial Autonomy in 1937 through the Government of India Act, in 1935, gave more powers to Indian Ministers to act independently. Though detailed plans for large scale expansion of elementary education were developed, the implementation was restricted because of the outbreak of the Second World War. For overcoming the constraints of funds at the disposal of Congress Ministers, Mahatma Gandhi suggested that the plans of mass education need not be held up and that universal, compulsory and free primary education of seven years' duration could be given to every child if the process of schooling could be made self-supporting. With this object in view, Gandhiji formulated the scheme of 'Basic Education' which was discussed and endorsed by the first Conference of National Education held at Wardha in October, 1937 which resolved that free and compulsory education be provided for seven years on a nation-wide scale, the medium of instruction be the mother-tongue, and the process of education during this period should centre around some form of manual productive work. This scheme was adopted in several provinces where the Congress was in power.

The Post-War Plan of Educational Development in India (1944) popularly known as the Sargent Plan, recommended the provision of free and compulsory education to all children in the age group of 6 - 14 years in a phased programme spread over a period of 40 years. However, the national leadership was determined to telescope the process and a Committee under the Chairmanship of B.G. Kher recommended that the goal should be achieved by 1960. It was this recommendation that formed the basis of Article 45 of the Directive Principles of the Indian Constitution enjoining that the "State shall endeavour to provide within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of 14 years." The goal of providing free and compulsory education to all children upto the age of 14 years has, however, not yet been achieved in spite of considerable investment of resources in successive Five Year Plans. An ever-increasing population, financial and organisational constraints, socio-economic problems and finally, lack of national will appear to have been the main hurdles in achieving the goal.

Consequently, on the recommendations of the Education Commission a Resolution on National Policy on Education was formally issued in 1968. It urged strenuous efforts for the provision of free and compulsory education at the elementary stage, with emphasis on equalisation of educational opportunities, correction of regional imbalances in provision of access and improvement of educational facilities, especially in the rural and backward areas. It also highlighted the need to emphasize the education of girls and spread of education among the backward classes and especially among the tribal people.

In order to reach the children whose circumstances prevented them from availing of full-time primary schooling facilities, the Central Advisory Board of Education (CABE) recommended the alternative channel of part-time education in 1972. Accordingly, part-time education was emphasised for the first time in the Draft of Fifth Plan (1974--79). The Fifth Plan also treated Elementary Education as part of the Minimum Needs Programme for which State Plan outlays were earmarked.

The Working Group on Universalization of Elementary Education set up by the Ministry of Education, Government of India in 1978 recommended a new motto : "Every child shall continue to learn in the age group of 6 - 14, on a full-time basis if possible, and on a part-time basis if necessary". It was stressed that in such an arrangement, the basic minimum knowledge of literacy, numeracy and inculcation of the social and civic responsibilities should not be sacrificed. The content of education should be meaningful and relevant to the socio- economic milieu and needs but should not thwart the scope of vertical mobility. This led to the initiation of a Centrally Sponsored Scheme for part-time non-formal education for backward States during the sixth Five Year Plan.

**Policies on Quality Elementary Education in Post –independence Area**

| | |
|---|---|
| Directive principles of State Policy 1950 | State to provide free and compulsory education for children till age 14. |
| Constitutional Amendment: 1976 | Education shifts to Concurrent list: increasing the role of centre |
| Right to Education 1993- 2001 | 1993 Basic Education a fundamental right: Supreme Court, July 1997 Draft Constitution Amendment Bill, Dec 2001 Presidential Accent |
| District Primary Education Programme launched 1994 | Contextual Education. by 2002 DPEP cover 271 districts in 18 states |
| Dakar Declaration - April 2000 | Education for All: : 1. Early childhood care and Education; 2. by 2015 Free and compulsory education particularly to girls, |

| | |
|---|---|
| | minorities etc; 3. equitable access to appropriate learning; 4. fifty improvement in Adult literacy; 6. Quality Improvement |
| Sarva Shiksha Abhiyan -2000-2001 | UEE by 2010: decentralised, participative planning, community ownership |
| Right To Education Bill - 2005 | Right to Education from age 6 to 14; fundamental duty of parents to provide education. |
| National Curriculum Framework 2005 | Five Principles: 1. Life Education 2. Non-rote models 3. Beyond textbooks 4. Flexible exams 5. social concerns |
| National Knowledge Commission,2005 | Need for central legislation ,norms and universal schooling |

## National Policy on Education (1986)

In spite of the massive expansion of educational facilities and efforts made for qualitative improvement of elementary education, the problems of access, participation and quality in respect of elementary education continued to persist. This, together with a variety of new challenges and social needs made it imperative to evolve a new design for education and new policy directions in the context of contemporary realities and future concerns. Therefore, a new National Policy on Education was formulated by the Government of India in May 1986. It was followed by the preparation of a "Programme of Action" in August, 1986 for the time bound implementation of the various recommendations.

The NPE-1986 resolved that all children who attain the age of about 11 years by 1990 will have five years of schooling or its equivalent through the non-formal stream, and "likewise by 1995 all children will be provided free and compulsory education up to 14 years of age."For promoting equality, the NPE stressed equal opportunity to all not only in access, but also in the conditions for success. To facilitate universal elementary education, the NPE envisaged" a large and systematic programme of non-formal education for school dropouts, for children from habitations without schools and working children and girls who cannot attend the whole-day schools."

The policy also recommended the laying down of 'Minimum Levels of Learning' for each stage of education, provision of essential facilities in primary schools through the scheme of Operation Blackboard (OB), adoption of child centred activity-based approach, and establishment of District Institutes of Education and Training (DIETs) for the pre-service and in-service education of teachers for elementary schools and District Resource Units for the personnel working in non-formal and adult education programmes.

The NPE (1986) was reviewed by the Ramamurthy Committee in 1990. Keeping in view its recommendations as well as various developments, the CABE Committee on Policy (1991) suggested certain modifications. The NPE (1986) with modification was adopted in May 1992 and led to the revised POA (1992) in August, 1992. Reiterating the constitutional directive, the National Policy on Education (NPE), 1986 as modified in 1992, stated that free and compulsory elementary education of satisfactory quality shall be provided to all children up to the age of fourteen years before we enter the 21st century.

The 1986 National Policy on Education (NPE) stated as its goal that universal primary education, i.e., up to class V, shall be achieved by 1990 and Universalisation of Elementary Education by 1995. Neither the target of the year 1990 nor that of 1995 was realized. In the context of the proposal to make free and compulsory education upto the age of 14 years, a committee of State Education Ministers was constituted by the Union Ministry of Human Resource Development in 1996. This committee wanted the State Governments to start primary schools within a distance of 1 to 1.5 km., from rural habitations provided that there is a population of 250 in the area. Similarly middle schools shall be established within a distance of 3 km., from rural habitations with a population of 500 in the area. However, in the case of starting schools in hilly desert, tribal and inaccessible areas these norms may be relaxed. Other recommendations of the Committee included free supply of textbooks, essential stationery and school uniforms to all children in primary schools. The Committee also recommended incentives like cash awards and scholarships, provision of teachers' training, quality textbooks, Minimum Levels of Learning (MLL) and continuance of Mid-day Meals Scheme. Further, minimum infrastructure and teachers as envisaged under Operation Blackboard should be provided in all primary and middle schools. Other recommendations of the committee were the promotion of special schemes for the education of girls, SCs and STs ought to be supported by the Central Financial Assistance. The Union and State Governments should earmark 50 per cent of the education budget to elementary education.

## Recommendation of NKC on RTE

The National Knowledge Commission has recommended certain measures to implement the RTE in a successful way.

1. **Central legislation:** Legislation at the national level is required to affirm the Right to Education, which is a fundamental right mandated by Article 21A. Since it cannot be dependent upon which state a citizen lives in, a model bill sent to be enacted individually by State Governments is not adequate to meet the constitutional responsibilities of the Government of India. Therefore, a central legislation should be enacted along the lines of the Panchayati Raj (Amendment) Act, requiring the states to enact Right to Education Bills within a specified time period, and with the primary financial responsibility for this resting with the central government.
2. **Financial commitment:** The Central Government must provide the bulk of the additional funds required to ensure the Right to Education. Therefore there must be financial provision in the central legislation, requiring the central government to share the revenues of the Prarambhik Shiksha Kosh with state governments and to provide additional resources as required to meet the requirement of ensuring the right to all children. Estimates for the additional resources required to achieve the goal of universal elementary education currently range from 0.8 per cent to 2.5 per cent of GDP, depending on the criteria used. However, the required financial resources are likely to be at the lower end of these estimates, since there is already close to universal provision in several states and there has been recent progress in providing more access through the Sarva Shiksha Abhiyan in other states.
3. **Time frame:** The state-level legislation should specify the period within which universal education of reasonable quality is sought to be achieved, preferably within three years. The model bill does not provide any time frame for adoption and implementation of the provisions.
4. **Schedule of norms and standards:** To ensure a minimum quality of education, it is important to have a schedule of norms for all schools to follow. The model bill does not have such a schedule of norms, and there is no specification of the minimum quality of education that schools should provide. There is only a reference to 'equitable quality' without defining the parameters of quality. While ensuring quality is a complex matter, certain norms regarding infrastructure, number of teachers per school and per student, teaching methods and other facilities, must be adhered to as necessary conditions.
5. **Specification for teachers:** Since teachers are critical to ensuring the quality of education, it is particularly important to lay down well-defined but flexible norms for the minimum qualifications of teachers. The model bill has no

specification of a teacher, or the qualifications and in-service training needed for the position. A teacher is only defined as a person who teaches in the classroom. It is necessary to specify norms for teacher qualification and training.

6. **Justifiability:** Any right, including the Right to Education, is only meaningful if it is justiciable. However, in the model bill sent to state governments, the onus is placed on parents or guardians of the child. The responsibility of the Government, at different levels, must be recognized and made justiciable. The example of the National Rural Employment Guarantee Act (NREGA) could be used in this context.
7. **Universal schooling:** School education must be provided to all. This necessarily also requires that children of the disadvantaged, landless and minority communities must also be integrated, along with children with disabilities or special needs. There should be no distinction made in terms of the type of schooling provided within the government system for children from different social, economic and cultural backgrounds.

## Conclusion

It may be concluded that the dream of right to education throughout the country was seen by Gopal Krishna Gokhale. Among the princely States, Baroda was the first to pass an Act for compulsory education of boys from age 7 - 12 and girls from age 7 - 10, in 1906. In 1910, Gopal Krishna Gokhale moved a resolution in the Imperial Legislative Council that "a beginning be made in the direction of making elementary education free and compulsory throughout the country", which was opposed by the official side. In 1917, Vithalbhai Patel was responsible for getting the first Law on Compulsory Primary Education in India passed by the Bombay Legislative Council. By 1930, every Province of British India had a law on primary education. Then, in independent India, various policies starting from DPSP(Directives Principles of State Policy), DPEP, SSA etc. led to the enactment of Right to Education Act 2009.

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# LEADERSHIP EFFECTIVENESS AND JOB SATISFACTION OF EDUCATIONAL ADMINISTRATORS IN HIGHER EDUCATION

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## ABSTRACT

*The present study was conducted to study the leadership effectiveness and Job satisfaction of effective and in effective educational administrators in higher education. A sample of 120 educational administrators in higher education were selected randomly from University of Kashmir, SKUAST-K, degree colleges and Non- Govt. affiliated B.Ed colleges of the valley. The investigators used Sanjoyt Pethe, Sushma Chowdery`s and Upinder Dhar`s Self Efficacy Scale, Haseen Taj`s Leadership Effectiveness scale and Amar sings Job satisfaction scale to collect data from the filed.The data was analyzed by employing percentage statistics, Mean, S.D, and t-value. The result reveals that effective educational administrators displayed better leadership and job satisfaction than ineffective education administrators.*

**Key Words:** *Leadership, Effectiveness, Job satisfaction, educational Administration*

## Introduction

Our society is changing rapidly, so new techniques are being adopted in education to meet the needs of the society. Therefore, education has become more important in the modern world as it is basic to economic development of India. If a nation does not pay enough attention to education, it will be committing suicide in a slow manner until disaster overwhelms it. It is a hard fact that education is a complex and highly specialized field and its efficient administration requires technical competence, administrative ability and understanding of the educational development. Change is an indispensable ingredient for educations system of any country. Changing trends in politico-socio-economic patterns of societies necessitate the importance to re-orientate or restructure the patterns and styles of education consonant with the emerging needs and aspirations of ever changing societies. Education system requires to be reformed to meet adequately the larger needs of today, and the direction in which changes should be made in the development of self-helpfulness and the spirit of free inquiry based on individual observation and reasoning as opposed to the traditional style of the past. It is the time that administrators of the institutions strive to cut themselves free from their leading strings (Stead, 1983). Today India stands at the threshold of a great change. Developmental programs are being planned and executed to increase the national wealth of the country. Natural resources are being exploited to accelerate economic efficiency. Education is receiving a great impetus. It is realized that democracy, can survive and thrive only on mass education. The Constitution requires universal elementary education up to the age of fourteen. Reforms in philosophy, aims, curriculum, methodology and evaluation are being introduced at all levels of education. At the elementary stage, basic education has replaced the traditional subject-centered curriculum. Secondary education is designed to suit the needs of the society and those of individuals. Programs of teacher education are being speeded up. University and Higher education is expanding both horizontally and vertically. Adults are receiving formal and informal education to adapt themselves to the changing situation. For this purpose, a comprehensive plan of social education is being worked out. But the success of all these educational plans depends upon the effectiveness of educational administration.

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Smooth operation of an educational institution requires competent educational administrators. They provide instructional leadership as well as manage day-to-day activities in Schools, Colleges and Universities. They also direct the educational programs and community service organizations. Educational administrators set educational standards and goals and establish the policies and procedures to carry them out. They also supervise and support staff, teachers, librarians, coaches, and others. They develop academic programs, monitor students, educational progress, motivate teachers and other staff, manage guidance and other student services, administer record keeping, prepare budgets, handle relations with parents, prospective and current students, and the community, and perform many other duties. Educational administrators may handle all these functions if they are well-trained and equipped with new knowledge and skills.

The Head of the institution occupies a very important position. The fate of an institution in a large measure depends upon the type of man who is heading the institution. Good institutions, for that matter are named after their Headmasters or Principals. The Head of the institution is the key educational leader and the chief executive officer of a complex and heterogeneous community comprising of eminent, devoted and dedicated professors and lecturers, students, their parents, governing bodies, Education Departments and University (Gupta, 1987). Effective leaders all share the same characteristics. Besides a drive to get the job done and accomplish the mission, the essence of effective leaders is how they think of and treat the people they are responsible for? Leaders do not belittle people or make them feel that they have nothing to contribute. Leaders don't hide in their offices to ignore problems. Leaders have to be visible; they have to convey a sense of oneness.

Leadership is defined as the process of influencing group activities toward the accomplishment of goals in a given situation. It is also defined as part of the organization that concerns itself with people. Leadership has occupied the mind and imagination of man for a long time. Katz and Kahu view leadership as an influence attempt (1978). According to Terry, "Leadership is the activity of influencing people to strive willingly for group objectives". Leadership is essential to influence people to achieve mutually compatible objectives. All organizational success can be attributed to leadership. It is believed that no act of administration can proceed in the direction of achievement of preset goals unless it is steered by the leadership. Thus the leadership is very highly valued in human society. Stogdill (1950), however, concluded in his study that "A person does not become a leader by virtue of the possessions of some combination of traits, but the pattern of personal characteristics of the leader must bear some relevant relationship to the characteristics, activities and goals of the followers. Leadership must be conceived in terms of the interactions of variables which are in constant flux and change". Napoleon ones said that there never were bad soldiers but only bad leaders. A competent leader has the ability to persuade others to accomplish the goals of the organization. Leadership transforms potential into reality.

Job Satisfaction is broadly defined as an individual's general attitude towards his or her job. Since Hoppock's monograph on job satisfaction in (1935), a substantial amount of research has been conducted on this topic. Hawthorne and Harwood's studies highlighted the importance of working conditions on one hand and social environment on the other, which effect human performance. The former led to the studies emphasizing the importance of motivational factors within the individual workers and the latter to the study of organizational and environmental climate of work situation. Job satisfaction is a positive emotional state that occurs when a person's job seems to fulfill important job values provided these values are compatible with one's needs. It is an individual's emotional reaction to the job itself. It is a person's attitude towards the job. People spend a sizeable amount of their time in work environment. Job satisfaction is related to but distinguishable from morale and job involvement. Since job is not an entity or physical thing but a complex of inter-relationships of likes, roles, responsibilities, interactions, incentives and rewards, job satisfaction has to be intimately related to all of them.

## Objectives

1. To study the Leadership Effectiveness of Educational Administrators in Higher Education.
2. To study the Job Satisfaction of Educational Administrators in Higher Education.
3. To compare effective and ineffective Educational Administrators on Leadership Effectiveness.
4. To compare effective and ineffective Educational Administrators on Job Satisfaction

## Method and Procedure

The present study was designed to study the leadership Effectiveness and job satisfaction of educational administrators in higher education. As such, the descriptive method of research was employed to carry out this piece of research.

In order to realize the objective of comparison between effective and ineffective educational administrators as first step, effective and ineffective educational administrators were identified on the basis of criterion of occupational efficacy measured with the help of Occupational Self Efficacy Scale. The high and low groups were drawn by employing extreme group technique of 27% above and below. As such the above 27% i.e., 32 educational administrators possessing high score were identified as effective educational administrators and 27% i.e. 32 educational administrators possessing low score were identified as ineffective educational administrators. This was followed by the comparison of effective and ineffective educational administrators on leadership behavior pattern and job satisfaction.

## Sample

The sample for the study consisted of 120 Educational Administrators and 240 Teachers selected from University of Kashmir, Sheri- Kashmir University of Agricultural Science and Technology (SKUAST-K), Govt. Degree Colleges and Non-Government Affiliated B.Ed Colleges operating in Kashmir. The sample of educational administrators was taken from 36 and 20 Departments of University of Kashmir and SKUAST-K respectively. All the Principals of Colleges in Government Sector were included in the study. However, the sample of principals from Non-Government Affiliated Colleges was drawn on the bases of systematic sampling technique.

## Tools

The following tools were selected to collect the data.

1. Sanjayot Pethe, Shushma Chowdery and Upinder Dhar Occupational Self Efficacy Scale (2006) was administrated to study the Occupational Efficacy of Educational Administrators in Higher Education.
2. Leadership Effectiveness Scale developed by Haseeen Taj. (LES) (2001)
3. Job Satisfaction Scale developed by Amar Singh and T.R Sharma. (JSS) (2006)

## Statistical analysis

The data collected was subjected to the following statistical treatment.

Percentage statistics mean, SD and t-value

## Leadership Effectiveness and Job Satisfactions of Educational Administrators

The leadership behavior of educational administrator was measured with the help of Leadership Effectiveness Scale. The data has been tabulated as under.

**Table 1.0: Showing the levels of Leadership Effectiveness of Educational Administrators in Higher Education (N=120)**

| Scores Obtained on LES Scale | N | Percentage | Remarks |
|---|---|---|---|
| 325-374 | 29 | 24.16% | Extremely Effective |
| 275-324 | 16 | 13.33% | Highly Effective |
| 225-274 | 27 | 22.50% | Effective |
| 175-224 | 22 | 18.33% | Less Effective |
| 125-174 | 26 | 21.66% | In Effective |

A glimpse of above table shows the leadership behavior pattern of educational administrators in higher education. The data reveals that 24.16% educational administrators were found extremely effective on leadership behavior pattern, 13.33% were found highly effective, 22.50% were effective. The data further reveals that 18.33% educational administrators were found less effective and sizable percentage (21.66%) were found in effective so far as their leadership effectiveness is considered.

**Table 1.1: Showing the levels of job satisfaction of Educational Administrators in Higher Education (N=120)**

| Scores Obtained on JS Scale | N | Percentage | Remarks |
|---|---|---|---|
| 74- above | 44 | 36.66% | Extremely Satisfied |
| 63-73 | 17 | 14.16% | Very Satisfied |
| 56-62 | 38 | 31.66% | Moderately Satisfied |
| 48-55 | 14 | 11.66% | Not Satisfied |
| 47-beow | 7 | 5.83% | Extremely Dissatisfied |

A perusal of above table shows the levels of Job Satisfaction of Educational Administrators in Higher Education. The statistical data reveals that 36.66% of educational administrators were found extremely satisfied with the job, 14.16% were found very satisfied with the job. 31.66% of the educational administrators were found moderately satisfied with the job. It was further observed that 11.66% of the educational administrators were found dissatisfied with the job and 5. 83% of educational administrators in higher education were found extremely dissatisfied with the job.

**Table 1.2: Showing the Mean Comparison of Effective and Ineffective Educational Administrators on overall scores on Leadership Effectiveness (N=68)**

| Group | Mean | S.D | t-value | Significance |
|---|---|---|---|---|
| Effective Educational Administrators (EEA) | 294.58 | 56.32 | 4.30 | 0.01 level |
| Ineffective Educational Administrators (IEA) | 239.86 | 48.18 | | |

A perusal of the above table shows the significance of difference between the mean scores of Effective and Ineffective Educational Administrators on overall score of leadership effectiveness. The results reveal that there is a significant mean difference between effective and ineffective educational administrators on overall score of leadership behaviour. The obtained t-value came out to be 4.30 which is significant at 0.01 level of significance. The mean difference favour effective educational administrators (M=294.58) which reveals that effective educational administrators exhibited better leadership style as compared to ineffective educational administrators.

The comparison of effective and ineffective groups of educational administrators on all dimensions of leadership effectiveness, it is interesting to note that effective and ineffective educational administrators differ significantly on interpersonal relations, intellectual operations, behavioral and emotional stability, ethical and moral strength, adequacy of communication, operation as a citizen and overall scores of leadership effectiveness scale. The effective educational administrators have been found to be more effective in interpersonal relations, higher in intellectual operations, are emotionally more stable and are stronger on ethical and moral values. They have adequacy of communication skills and are operating better as a citizen.

**Table 1.3: Showing the Mean Comparison of Effective and Ineffective Educational Administrators on Overall Dimensions of Job Satisfaction Scale (N=68)**

| Group | Mean | S.D | t-value | Significance |
|---|---|---|---|---|
| Effective Educational Administrators (EEA) | 83.36 | 14.32 | 4.27 | 0.01 level |
| Ineffective Educational Administrators (IEA) | 69.14 | 13.15 | | |

A quick look on the above table reveals that there is a significant mean difference between the effective and ineffective Educational Administrators on 'Overall Dimensions' of Job Satisfaction Scale. The obtained t-value came out to be 4.27 which is significant at 0.01 level of significance. The mean difference favours effective educational administrators (M= 83.36), which indicates that effective educational administrators were better satisfied with their job than the ineffective educational administrators.

On the basis of interpretation of data, it is worthwhile to mention that effective and ineffective educational administrators differ significantly on job concrete factor, job abstract factor, psycho-social factor, economic factor, community/national growth factors of job satisfaction scale. The effective educational administrators have been found more satisfied on job than ineffective educational administrators.

## Major Findings

On the basis of analysis and interpretation of the data, certain meaningful conclusions have been drawn which are reported as under:

i. It was found that 59.99% educational administrators in higher education fall in the effective zone of leader ship and 39.99% fall in the ineffective zone of leadership. It has been further found that the educational administrators who fall in the effective zone of leadership appreciate the good work and try out innovative strategies in solving the group problems. They are judicious and fair in using the rewards and are easily approachable. They adhere to the group norms and treat others as their equals and are concern about the welfare of the group. They stimulate well ordered climate conducive for team work and respect the opinion of others in group decisions. They are attentive while listening to others and experiment new ideas after carefully studying the pros and cons. It was further found that the educational administrators who fall in the ineffective zone of leadership behavior do not consider them selves accountable for their actions. They over exercise their power and easily moved by the situation. They tend to escape obligations and do not mingle with the group. They disregard with the information that challenges their status quo. They ignore the view points of others and are vogue and fuzzy in expression. They tend to delay action on policies and defend their mistakes.

ii. It has been found that 36.66% of the educational administrators in higher education were extremely satisfied, 14.16% were very satisfied, 31.66% were moderately satisfied, 11.66% were not satisfied and 5.83% were extremely dissatisfied with their job. It was further found that the educational administrators who are satisfied with their job feel that the position and job they hold have a positive impact on their social status with regard to economic advantages like salary, allowance and increment they rate their job as excellent. Job satisfied educational administrators derive pleasure from their job and they are satisfied with the working conditions in their offices. They do their duty with a professional sprit and believe that work is worship. It has also been found that the educational administrators who are not satisfied with their job always hunt for excuses. They are more concerned with revision in pay scale and other monetary benefits. They oppose new trends in methodology of educational administration and maintain status quo. They do not weight or recognize the opinion of other faculty members. They are some what rigid and authoritative while discharging their duties.

iii. It has been found that effective and ineffective educational administrators differ significantly on overall dimension of leadership effectiveness scale. The effective educational administrators showed better leadership potential than the ineffective educational administrators.

iv. It was found that there is a significant difference between effective and ineffective educational administrators on ‘overall dimension’ of job satisfaction scale. The mean difference favoured effective educational administrator which indicates that effective educational administrators were better satisfied with their job than the ineffective educational administrators.

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# ROLE OF TEACHER IN OPEN DISTANCE LEARNING (ODL) SYSTEM

**Habibullah Shah** *

## ABSTRACT

*Teaching is a socially responsible occupation which is highly accountable and bureaucratic, demanding intellectually, emotionally and physically, and intensive and unrelenting. Although employed to teach, teachers are engaged in a wide variety of tasks which are additional to face-to-face teaching. A teacher occupies an important and unique place in the system of education. He is the heart and soul of this system and leads the students from the darkness of ignorance to the light of knowledge and understanding. Thus, the importance of a teacher for the community and educational system is very much evident especially when we talk about the role of teacher in ODL system. The role of teacher is very peculiar and unique because in response to the growing social demand for education, the role of ODL have been augmented, which contribute in a significant way to the efforts made for human capital formation. Distance education provides opportunities for teachers to extend and expand their classrooms beyond the confines of a building. In this paper, an attempt has been made to explain the role of distance education teacher from radical perspective.*

**Key Words:** Teacher, ICT, Open Distance Learning, Manager and Human Being.

> *I never teach my pupils, I only attempt to provide them the conditions in which they can learn.*
>
> Albert Einstein

## Introduction

Teaching is a socially responsible occupation which is highly accountable and bureaucratic, demanding intellectually, emotionally and physically, and intensive and unrelenting (Sachs 2003). Although employed to teach, teachers are engaged in a wide variety of tasks which are additional to face-to-face teaching. These extra duties include

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curriculum design and development; school planning; marketing (mostly private school teachers); community relations; information technology; workplace health and safety; resource management; student welfare; along with playground and sports supervision.

Ever since the beginning of life on earth, teacher has been considered to be the backbone of society. He is reported as a strong agent for the welfare of the nation and is considered to be the architect of the nation ( NPE, 1986). The teacher is given a higher position than parents because he opens the pupils' eyes of knowledge and moulds their character accordingly. As it is said that, God created man after his own image so also the teacher fashions his student after his own image. In the western world also, the teacher is given great regards. A teacher affects eternity, he can never tell where his influence stops. His work does not confine to a particular state or country, it transcends all the boundaries. His contributions do not confine to a particular period of time. His influence is believed to cover the entire span of life. According to Robert, Coles (1990), *"I mention these teachers in my life because, in fact, they continue to be a great big part of it still. Their voices are in my head and are part of my voice, I am sure. Their thoughts and values inform what I consider and call my own thoughts and values. Their example – the things they did, the style of their teaching, the strategies they employed – continue to inform the way I work. …"*.

Even Hazrat Ali has beautifully said,

> *"I am a slave to the person who has taught me even a single word, he may sell or set me free"*

A teacher occupies an important and unique place in the system of education. He is the heart and soul of the system and leads the students from the darkness of ignorance to the light of knowledge and understanding. Thus, the importance of a teacher for the community and educational system is very much evident especially when we talk about the role of teacher in open distance learning (ODL) system, where the role of teacher is very peculiar and unique because in response to the growing social demand for education, the role of ODL have been augmented, which contribute in a significant way to the efforts made for human capital formation. Distance education provides opportunities for teachers to extend and expand their classroom activities beyond the confines of a building. It is also an opportunity to revisit techniques for teaching since distance education incorporates both place and time shifting. (Herring & Smaldino, 1997). A *place shift* suggests that all the participants in the class are not in a single location, whereas a *time shift* implies that the instruction is not "live." Both these aspects of distance learning present instructional challenges to teacher even the most experienced educators. *"Brown, H. Douglas (2007) mentions that teachers can play* *many roles in the course of teaching and this might facilitate the learning. Their ability to carry these out effectively will depend on a large extend on the rapport they establish with their students, and on their own level of knowledge and skills.*

## Review of the Literature

Various authors have expressed their view point on the role of teacher in the ODL system. The distance teacher has a responsibility to help students learn by making sure that the demands of the teaching-learning context are pedagogically sound (Laurillard, 1993). They must have the 'knowhow' and confidence to use all of the various educational technologies in order to be truly effective in distance teaching. Dzakiria (2004) opined that distance teachers must be properly trained and motivated to be effective. O'Neil (2006) believed that the as distance education grew, so did the realization that the role of the teacher was changing. He/she must adhere to this new arena of teaching. Parakh (2007) advocated that designing, preparing or developing and delivery of the courses are the three main functions of a teacher at the Open University system and include three types of activities: academic, technical and administrative. No educational material can be prepared without academic input. Academic input means imparting instruction, giving guidance and rendering assistance for pursuing the study in a particular field. But this input should be presented in a manner that the educational material could carry out the academic objectives. Therefore the ODL teacher should be acquainted with latest knowledge , academic inputs and skills. However the present paper reflects the role of distance education teacher in a broader perspective.

## Role of Distance Teacher in Changing Times

As in any educational situation, the distance teachers set the tone for learning in the educational environment. Nevertheless, setting the right tone to produce good teaching and learning experience is not an easy task in ODL system. Quite often, the default position according to Walker (2002) "...seems to be that distance teaching requires only the addition of a few skills not already in the repertoire of the conventional teacher. That once in place, most distance courses can run... (p.113). Distance teachers must be properly trained and motivated to be effective. This means that the distance teacher has a responsibility to help students learn by making sure that the demands of the teaching-learning context are pedagogically sound. They must have the 'knowhow' and confidence to use all of the various educational technologies in order to be truly effective in distance teaching.

Teachers working in the ODL systems have much more responsibility towards the society. Usually distance education is considered as an alternative mode of education where majority of the students are those who are dropouts of formal system and belong to the down drowned segments of the society. Since the author is himself working in the ODL system and has realized that a distance education teacher has to perform the following roles in order to contribute for educational development for any society.

1. Teacher as a Subject Expert
2. Teacher as a System Expert
3. Teacher as Manager
4. Teacher as an ICT expert.
5. Teacher as a Social and Humanistic being

## Teacher as a Subject Expert

It is common in all distance education institutions that faculty for each course is usually one or two except in open universities where faculty for each programme is appointed on the lines of the formal departments. It is a gospel truth that modern age is age of specialization especially in formal departments where there is a full fledged faculty and each teacher is given the classes according to his / her specializations while in ODL system the case is reverse. Here the teacher has to keep himself/herself updated with all specializations of the programme for which he/she is appointed. Here teacher has usually to edit the study material ad provide the counseling/guidance /instruction to the students enrolled for the programme. In ODL system the student can ask any question from any paper/specializations to the concerned teacher at any time therefore it is necessary upon the distance education teacher to keep himself updated with all aspects/specializations of the his/her subject. So the first quality which distance education teacher should possess is that he/she should be academically sound and usually distance education teachers are more competent in their subjects .

## Teacher as a System Expert

Distance Education is the cost-effective viable alternative to formal system of education. Due to the technological intervention it is gaining momentum and its inbuilt flexibility has put it on the growth trajectory. Teachers working in the ODL system in addition to their own subject have to understand the distance education as a system and the various aspects of the ODL system otherwise distance teachers shall feel adjustment problem in the system for which they have to work. By understanding the ODL system, they will come to know the how to deliver their services for the their course through ODL system. It is very essential for a distance education teacher to know the distance education as a system in whole so that he/she can minimize the physical gap between teacher and student. Since another area that affects the change of the role of the teacher in distance education is the Transactional Distance Gap. According to Moore (2003), transactional distance is the gap of understanding and communication between the teachers and learners caused by geographic distance. It is filling this 'gap' of understanding and communication between the teacher and learner that defines the role of the teacher. The teacher must be the one to bridge that gap through special teaching techniques, distinctive procedures in instructional design and the facilitation of interaction. In order to become ODL expert, he /she has to acquire the knowledge of basic things like course planning, course designing, content and format editing, delivery mechanism of the course ,contact classes and student support services, and other related aspects of distance education system. Therefore every distance education teacher is supposed to be ODL expert also.

## Teacher as Manager

In any ODL system, the one of the major role of the teacher is to act like a manger. As discussed above, the faculty for each course in maximum Distance Education institutions is very limited so the teacher concerned has to manage all the activities of the course himself both administrative and academic. He/She has to coordinate all the course related activities like Indentifying script writers, resource persons, arranging contact classes, preparation of assignments, study material, inter assessment tests, extension lectures, books for library, student support services, examination related matters and other activities of the course he/she coordinates. Briefly speaking the teacher should have the leadership quality and managerial skills in order to run the programme smoothly. Therefore in ODL system, teacher is supposed has to play the role of manager very effectively.

## Teacher as an ICT Expert.

Information and Communication Technology (ICT) is increasingly having pervasive role and presence in the educational milieu as it continues to shape all aspects of our lives. Education, as all other social institutions, are rapidly embracing information and communication technologies (ICT). Globalization and the knowledge-based economy are leaving no choices for education systems worldwide but to adopt ICT and weave it into their educational milieus, and the ODL system is no exception. ICT is considered now as soul of ODL system therefore it essential on part of the distance education teacher to be well versed with the ICT and involve himself fully in ICTs in order to be a role model for the students. It is a gospel truth that distance teachers must also change the manner in which information is delivered. When the lecture mode does not work well, other media like the multimedia presentations are successful (Weber, 1996). Of course this means more preparation time for the distance teacher and the motivation must be there. Walcott (1994), cited in Carter (2001) opined that "to effectively bridge the gaps between classroom and distance teaching, faculty need to look at the distance teaching from the learners' point of view by involving ICT tools." (pg. 249).

Sherry (1995) states that distance education technologies are expanding at an extremely rapid rate. She continues on to point out that instructional designers and curriculum developers were so captivated with the latest technologies that they were not dealing with the new roles of teacher, site facilitator and student in the distance learning process. Electronic technologies have increasingly changed the interaction between teacher and student. For most of the 20th century, distance education involved pen and paper, the typewriter, and the postal service, which provided the sole link between the individual teacher and the individual student. With the development of the radio and then television, it became possible to transmit educational courses, programs and content widely using these mass media distribution channels (Moore and Anderson, 2003). But with development of the world-wide-web (WWW) and satellite, the face of ODL learning is changing rapidly as it has given birth to online learning, e-learning, virtual learning , blended learning, mobile learning and other types of learning for distance students. When integrating student experiences with technology, the role of the teacher changes. The teacher no longer has to be in charge, but can give some of the control over to the students and the technology. The task for the teacher is to arrange the learning environment in such a way as to provide situations in which students use their own knowledge to construct meaning of a particular problem. A learning environment has to be created in which distance students are active participants in the learning process (Sellers, 2001). All this is possible only when teacher is himself techno friendly and enabled with latest skills of ICT. Therefore in any ODL system teacher has to be an ICT expert .

## Teacher as a Social and Humanistic Being

It is an accepted fact that student –teacher ratio in ODL system is always high as compare to formal system of education. So it is quite obvious that a distance education teacher has to be more social rather than self centered. As cited above, there is geographical gap between the teacher and student therefore, students can use other means to reach their teachers like mobile phone, mail, fax and other servicers at any time because maximum distance learner always try to reach their teachers during off office hours like morning, evening and holidays because maximum client of ODL system are from service and business sector. Therefore an ODL system teacher has to be mentally ready to provide his/her service during personal time also. Sherry (1996) believes that:

> *"The most important factor for successful distance learning is caring, concerned teacher who is confident, experienced, at ease with the equipment, uses the media creatively, and maintains a high level of interactivity with the students."*

On the other hand, distance education teacher is supposed to have the latest information about all courses of his department with regard to admissions, results, contact classes and examination as society in which he lives is expecting such things from him/her so he has to increase the level of patience and be more humanistic in outlook for all practical purposes then he can serve the society nicely.

## Conclusion

As ODL system is growing and is having major challenges ahead, as such the roles of the teacher in ODL system are always in flux. He/she must adhere to this new arena of teaching and research. Beaudoin (1990) stated that the emergence of increasingly student-centered learning activities in the 1970s, facilitated by new instructional technology introduced in the 1980s, is contributing to a dramatic evolution in the roles of teachers, and raises fundamental questions within the professoriate about how it will contribute to the teaching-learning process in the 1990s and beyond. In particular, the likelihood of significant increases in distance learning enrollments within the next decade will have a profound impact on faculty members' instructional roles.

It is important to remember that distance education may be as new to the students as it is to the new teacher who has joined recently in the ODL system. Preparing students for instruction is important in any teaching mode to maximize learning from class participation. But it is especially important to prepare students for settings where class participants are separated across distances. Students need to understand their responsibility to ensure a successful learning experience by a distance education teacher. The teacher at a distance needs to be creative and imaginative in the design and structure of the course. One rule of thumb is that successful interactive learning experiences that work in a traditional classroom are adaptable to the distance learning environment. But they may require more than just some changes to the visuals or the handouts. They may require inventiveness and innovation. Teaching at a distance can be a pleasurable experience for everyone involved, instructor and student alike. Keeping it interesting, and motivating the learners to remain active, can make it a valuable learning experience as well as fun. It is a big challenge before distance education teacher.

In order to provide a viable educational environment for all distance learners, it is important that distance teachers understand their own teaching styles, adjust their teaching styles to accommodate the diverse cultures and learning styles of their distance learners and redesign their teaching approach and face-to-face meetings with flexibility and responsiveness.

The distance teachers must also be aware of getting instructional materials, handouts, tests, and other class items to learners on time. It is important for the distance teachers to develop a sense of community, achieve maximum participation, and get the distance learners to be engaged and get involved in the process. The idea of learning as a collaborative process is very important when learners are separated by distance. According to research by Palloff & Pratt (2000), "collaborative learning processes assists learners to achieve deeper levels of knowledge generation through the creation of shared goals, shared exploration, and a shared process of meaning making" (pg. 6). It is up to the distance teachers to be aware of this in the distance learning environment and to encourage collaborative learning and a sense of community among the distance learners.

Last, but not least teaching and learning at a distance is demanding. Efforts need to be made to ensure that learning is made more meaningful and interesting for distance learners by ensuring that the learners and their distance teacher share responsibility for developing learning goals and objectives; actively interacting with class members; promoting reflection on experience; relating new information to examples that make sense to learners; maintaining self-esteem; and evaluating what is being learned. This is the challenge and the opportunity provided by ODL system before the distance education teachers. Let us realize it and be reflective teachers.

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# ROLE OF MID DAY MEALS IN UNIVERSALIZATION OF ELEMENTARY EDUCATION, A CASE STUDY OF ZONE KAKAPORA, PULWAMA

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## ABSTRACT

*This paper evaluates the role of mid day meals in the universalization of elementary education in zone Kakapora. It was observed that mid day meals play an important role in the universalization of elementary education by increasing the percentage of enrollment of children at elementary level. An average of 5.48% of increase in enrollment was observed during the study. The study has revealed that mid day meals is one of the major factors in realizing the national goal.*

## Introduction

The mid day meal (MDM) scheme is the world's largest school-based feeding programme aimed at promoting universalisation of elementary education and improving the nutritional status of students (Kapur and Chowdhury, 2011). Mid Day Meal in schools has had a long history in India. In 1925, a mid day meal programme was introduced for disadvantaged children in Madras Municipal Corporation. By the mid 1980s three states viz. Gujarat, Kerala and Tamil Nadu and the union territory of Pondicherry had universalized a cooked mid day meal programme with their own resources for children studying at the primary stage. Mid Day Meal was also being provided to children in tribal areas in some states like Madhya Pradesh and Orissa. By 1990-91, the number of states implementing the mid day meal programme with their own resources on a universal or at large scale had increased to twelve, namely, Goa, Gujarat, Kerala, Madhya Pradesh, Maharashtra, Meghalaya, Mizoram, Nagaland, Sikkim, Tamil Nadu, Tripura and Uttar Pradesh. In another three states, namely Karnataka, Orissa and West Bengal. The programme was being implemented with state resources in combination with international assistance. Another two states

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namely Andhra Pradesh and Rajasthan were implementing the programme entirely with international assistance.

National programme of nutritional support to primary education (commonly known as the mid day meal scheme) was launched as a centrally-sponsored scheme on 15th August, 1995. On 28 November 2001, the supreme court of India passed an order directing all state governments to introduce cooked mid-day meals in primary schools. Since then, like-minded citizens and organisations around the country have been campaigning for the provision of nutritious mid-day meals to all school children. The goals of school feeding programs differ, but often include relieving short-term hunger (Allen 2001), improving micronutrient status (Allen 2001), growth (Allen 2001; Levinger1986), cognition (Levinger 1986) and academic performance (Allen 2001; Levinger 1986) in both higher and lower-income countries. In developing countries, school feeding also aims to increase school attendance and enrolment (Allen 2001, Levinger 1986) and to encourage students to stay in school longer (Kristjansson et al, 2007). Today, 50 million children are already covered under school meal programme and with adequate public pressure; another 50 million are likely to get on board in the near future. However, the quality of mid-day meal programme needs radical improvement in most states.

Close supervision and regular inspections are essential to achieve higher quality standards. With adequate resources and quality safeguards mid day meals can play a major role in improving nutritional status, school attendance and classroom hunger (Rachna and Uma, 2011).

## Objectives of the study

The present study was carried out keeping in view the following objectives into consideration:

(i) To study the role of mid day meals in universalization of elementary education..
(ii) To evaluate the role of mid day meals in enhancing the percentage of enrollment.

## Methodology of the study

**Sample of the study:** The sample of the study consisted of 9221 students from different schools of zone kakapora.

**Tools and techniques of the study:** The data for the present investigation was collected with the help of following tools:

Information schedule: This was developed to find out the elementary schools existing in the zone Kakapora and their enrollment.

Information blanks: information blank I was developed for the investigation and administered with the purpose to survey different elementary schools existing in the zone Kakapora and collect information with regard to school going children sex wise in the age group 6-14. Information blank II was developed in order to get the right information about the quality of mid day meals and its role in the universalization of elementary education.

## Procedure:

The information schedule was administered to the sample subject in order to find out the different elementary schools in the zone Kakapora and also to find out their enrollment. The roll statement of different schools of zone kakapora was collected from the year 2004 to 2011. The percentage of increase in enrollment was calculated to study the role of mid day meals in the universalization of elementary education. Further the information blank I was developed and administered to survey the different elementary and collect information about the school going children in the age group of 6-14. Information blank II was administered to collect information about the quality and role of mid day meals in the universalization of elementary education.

## Analysis and Interpretation

The roll statement of boys middle school Dougam from 2004 to 2011 is given in Table 1 and graphically presented in Figure 1. The data reveals that during the study period the highest roll was present during the year 2011. The study revealed that on an average 7.63 % increase in enrollment was observed in the boys middle school Dougam during the study period (Fig.11, page 13).

**Table1: Roll statement of boys middle school Dougam from 2005-2011.**

| Year | Total Roll |
|---|---|
| 2005 | 55 |
| 2006 | 56 |
| 2007 | 60 |
| 2008 | 70 |
| 2009 | 71 |
| 2010 | 85 |
| 2011 | 84 |

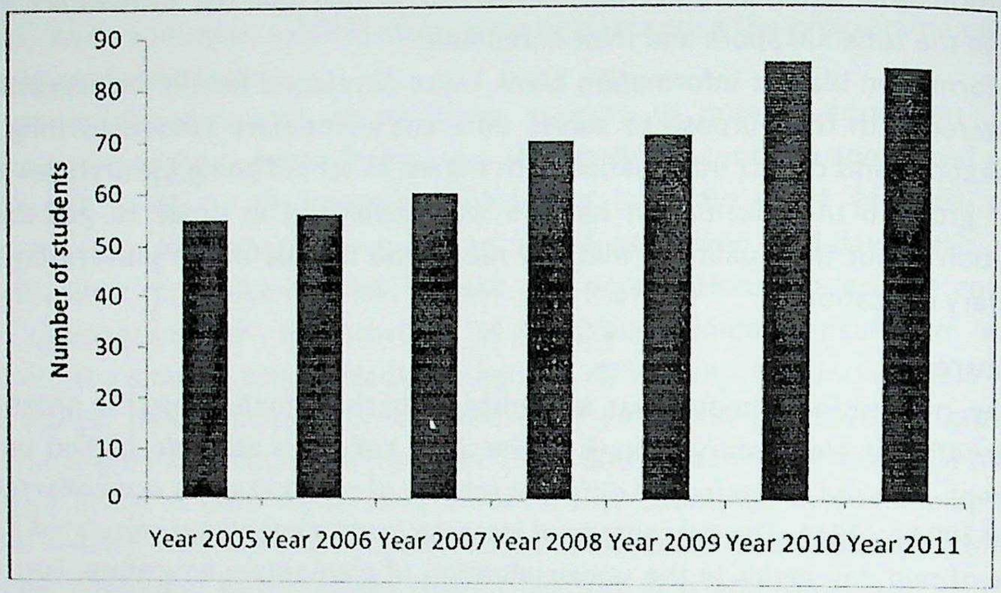

Fig. 1: Roll statement of boys middle school Dougam from 2005-2011.

The roll statement of middle school Kakapora from 2005 to 2011 is given in Table 2 and graphically presented in Figure 2. The data reveals that during the study period the highest roll was present during the year 2006. The study revealed that on an average 5.47% increase in enrollment was observed in the middle school Kakapora during the study period (Fig 11, page 13).

**Table 2: Roll statement of middle school Kakapora from 2005-2011.**

| Year | Total Roll |
|---|---|
| 2004 | 129 |
| 2005 | 171 |
| 2006 | 191 |
| 2007 | 171 |
| 2008 | 155 |
| 2009 | 185 |
| 2010 | 178 |
| 2011 | 175 |

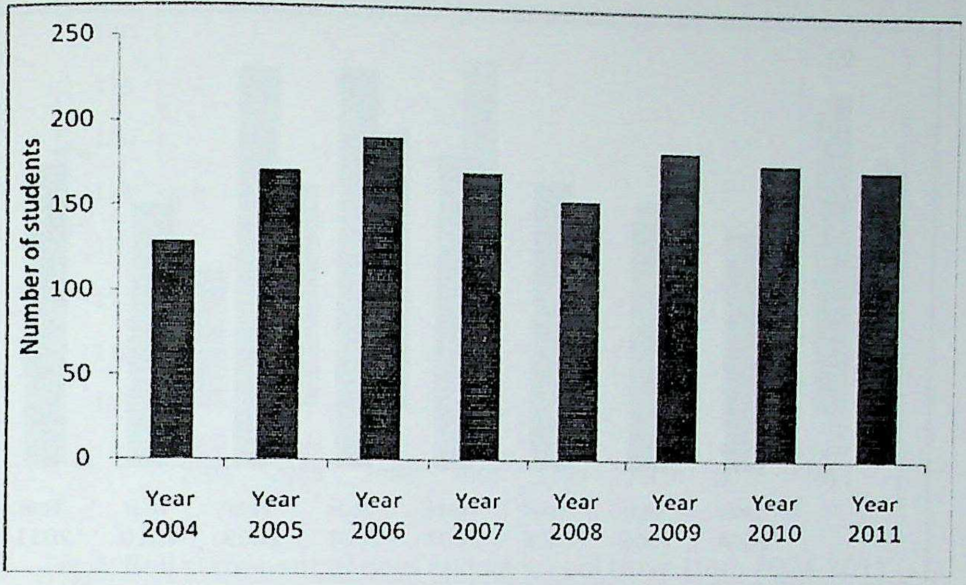

Fig 2: Roll statement of middle school Kakapora from 2004-2011.

The roll statement of upper primary school Kawoosibagh from 2004 to 2011 is given in Table 3 and graphically presented in Figure 3. The data reveals that during the study period the highest roll was present during the year 2008 and 2009. The study revealed that on an average 6.4 % increase in enrollment was observed in the upper primary school Kawoosibagh during the study period (Fig. 11, page 13).

**Table 3: Roll statement of UPS Kawoosibagh from 2004-2011.**

| Year | Total Roll |
|---|---|
| 2004 | 47 |
| 2005 | 54 |
| 2006 | 62 |
| 2007 | 67 |
| 2008 | 85 |
| 2009 | 85 |
| 2010 | 56 |
| 2011 | 64 |

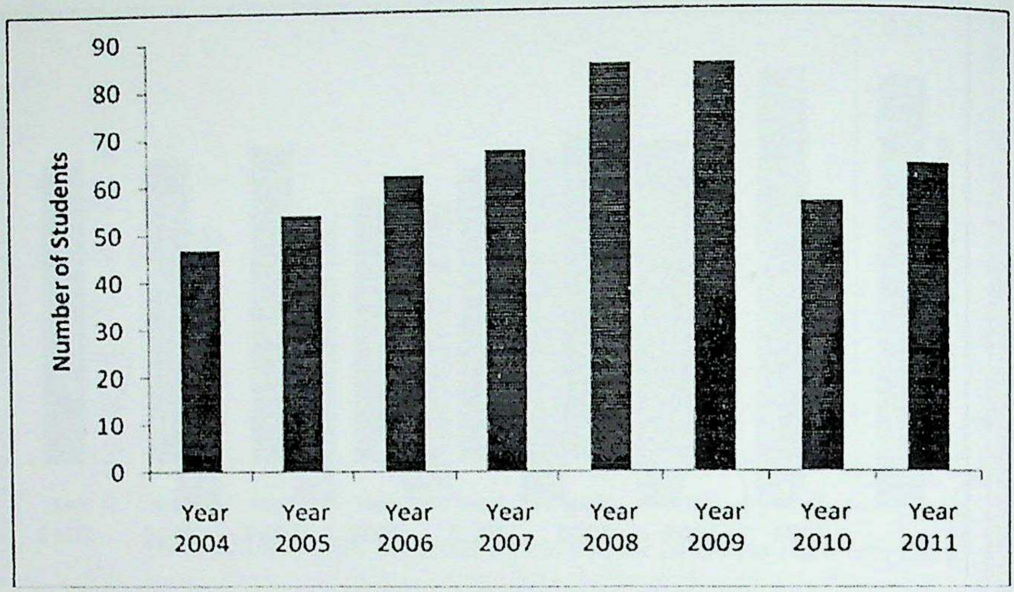

Fig. 3: Roll statement of UPS Kawoosibagh from 2004-2011.

The roll statement of boys middle school Larve from 2004 to 2011 is given in Table 4 and graphically presented in Figure 4. The data reveals that during the study period the highest roll was present during the year 2007. The study revealed that on an average 2.06 % increase in enrollment was observed in the middle school Kakapora during the study period (Fig.11, page 13).

**Table 4: Roll statement of boys middle school Larve from 2004-2011.**

| Year | Total Roll |
|---|---|
| 2004 | 118 |
| 2005 | 126 |
| 2006 | 131 |
| 2007 | 138 |
| 2008 | 121 |
| 2009 | 125 |
| 2010 | 123 |
| 2011 | 134 |

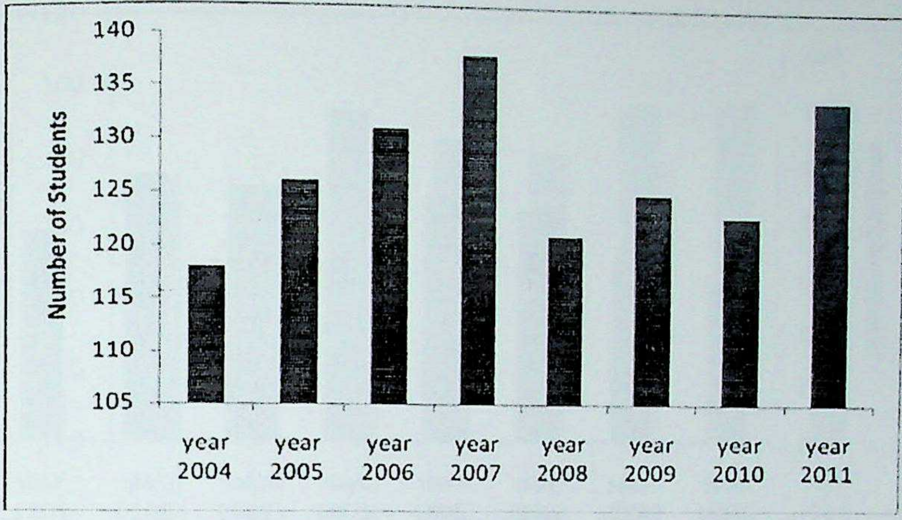

Fig 4: Roll statement of boys middle school Larve from 2004-2011.

The roll statement of upper primary school, Lelhar from 2004 to 2011 is given in Table 5 and graphically presented in Figure 5. The data reveals that during the study period the highest roll was present during the year 2008. The study revealed that on an average 5.47% increase in enrollment was observed in the middle school Kakapora during the study period (Fig 11, page 13).

**Table 5: Roll statement of upper primary school Lelhar from 2004-2011.**

| Year | Total Roll |
|---|---|
| 2004 | 58 |
| 2005 | 67 |
| 2006 | 82 |
| 2007 | 87 |
| 2008 | 117 |
| 2009 | 90 |
| 2010 | 94 |
| 2011 | 74 |

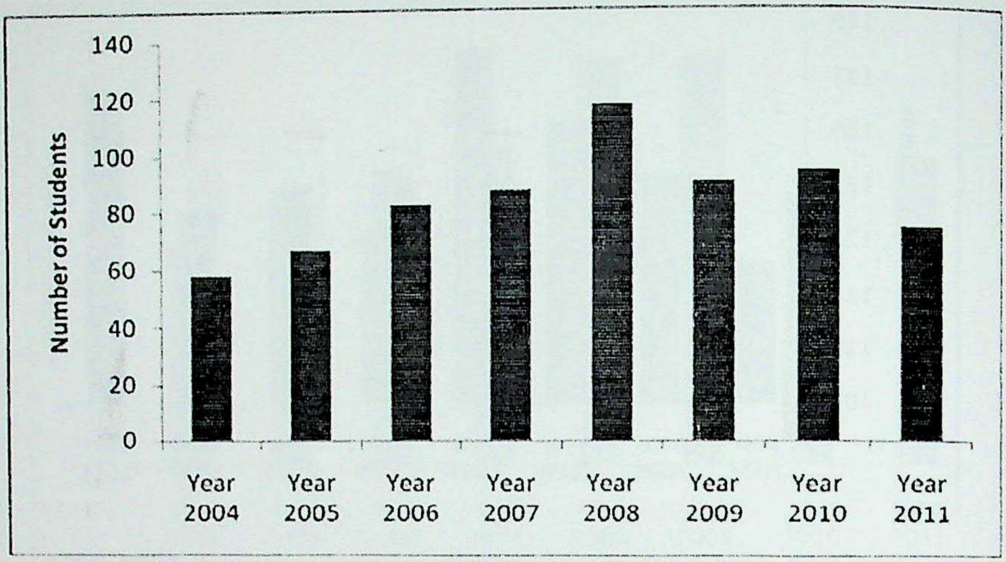

Fig. 5: Roll statement of upper primary school, Lelhar from 2004-2011. .

The roll statement of upper primary school Marvel from 2004 to 2011 is given in Table 6 and graphically presented in Figure 6. The data reveals that during the study period the highest roll was present during the year 2011. The study revealed that on an average 2.06% increase in enrollment was observed in the upper primary school Marvel during the study period (Fig. 11, page 13).

**Table 6: Roll statement of upper primary school Marvel from 2004-2011.**

| Year | Total Roll |
|---|---|
| 2004 | 35 |
| 2005 | 41 |
| 2006 | 69 |
| 2007 | 105 |
| 2008 | 120 |
| 2009 | 130 |
| 2010 | 132 |
| 2011 | 136 |

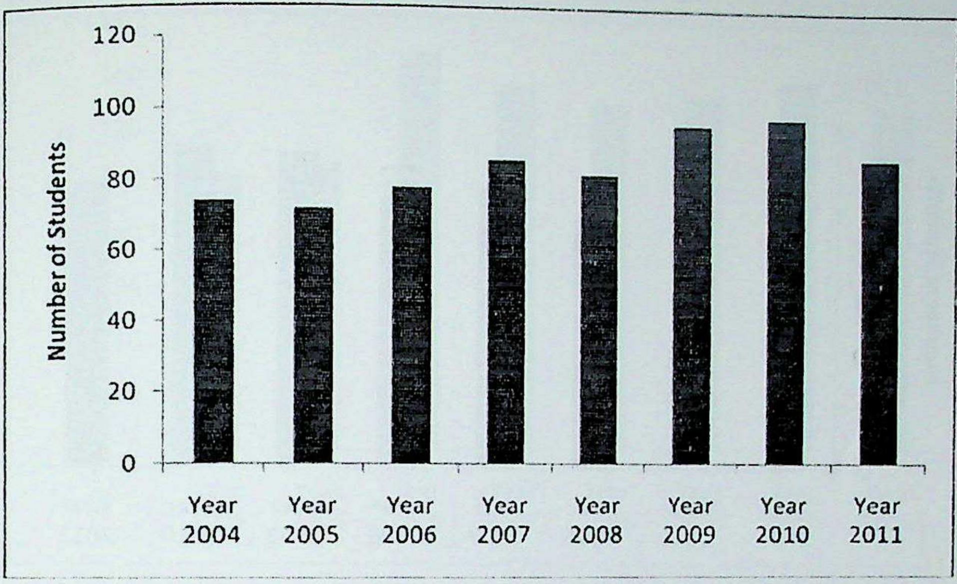

Fig. 6: Roll statement of upper primary school Marvel from 2004-2011.

The roll statement of girls primary school Pahoo from 2004 to 2011 is given in Table 7 and graphically presented in Figure 7. The data reveals that during the study period the highest roll was present during the year 2010. The study revealed that during the study period an average of 2.73% increase in enrollment was observed in the girls primary school Pahoo (Fig 11, page 13).

**Table 7: Roll statement of girls primary school Pahoo from 2004-2011.**

| Year | Total Roll |
|---|---|
| 2004 | 74 |
| 2005 | 72 |
| 2006 | 78 |
| 2007 | 86 |
| 2008 | 82 |
| 2009 | 96 |
| 2010 | 98 |
| 2011 | 87 |

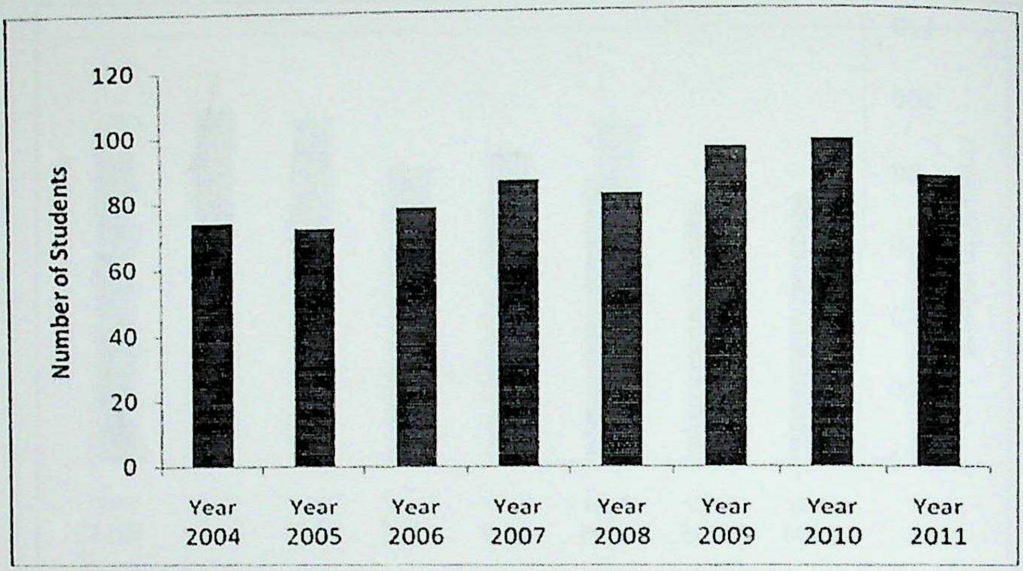

Fig. 7: Roll statement of girls primary school Pahoo from 2004-2011.

The roll statement of upper primary school Khadrimoh from 2005 to 2011 is given in Table 8 and graphically presented in Figure 8. The data reveals that during the study period the highest roll was present during the year year 2006. The study revealed that in on an average 4.54% increase in enrollment was observed in the upper primary school Khadrimoh during the study period (Fig 11, page 13).

**Table 8: Roll statement of upper primary school Khadrimoh from 2004-2011.**

| Year | Total Roll |
|---|---|
| 2004 | 102 |
| 2005 | 108 |
| 2006 | 149 |
| 2007 | 138 |
| 2008 | 131 |
| 2009 | 134 |
| 2010 | 141 |
| 2011 | 131 |

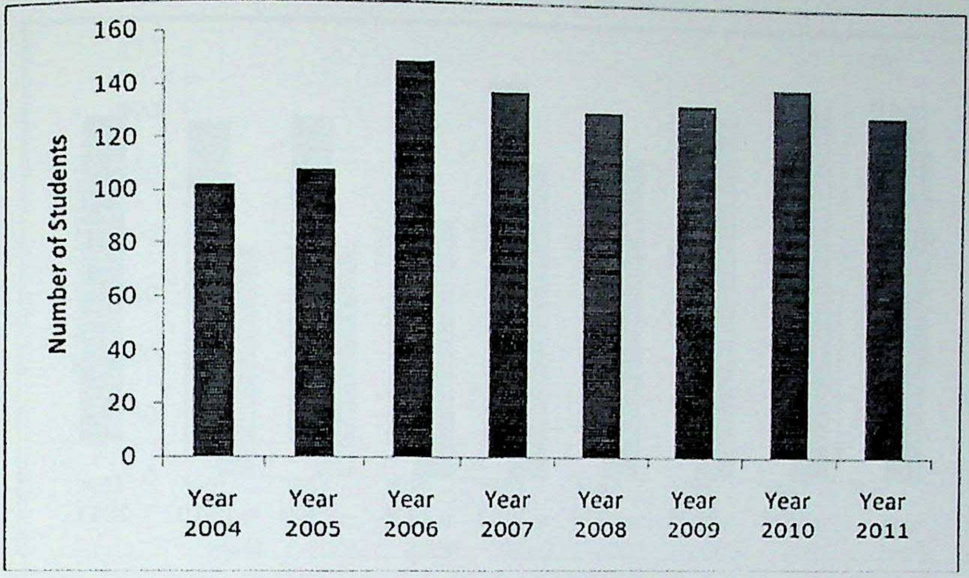

Fig. 8: Roll statement of upper primary school Khadrimoh from 2004-2011.

The roll statement and percentage of increase in enrollment of boys primary school Uthoora from 2004 to 2011 is given in Table 9 and graphically presented in Figure 9. The data reveals that during the study period the highest roll was present during the year 2007. The study revealed that in on an average 9.84% increase in enrollment was observed in the boys primary school Uthoora during the study period (Fig. 11, page 13).

**Table 9: Roll statement of boys primary school Uthoora from 2004-2011.**

| Year | Total Roll |
|---|---|
| 2004 | 39 |
| 2005 | 64 |
| 2006 | 64 |
| 2007 | 74 |
| 2008 | 66 |
| 2009 | 66 |
| 2010 | 65 |
| 2011 | 66 |

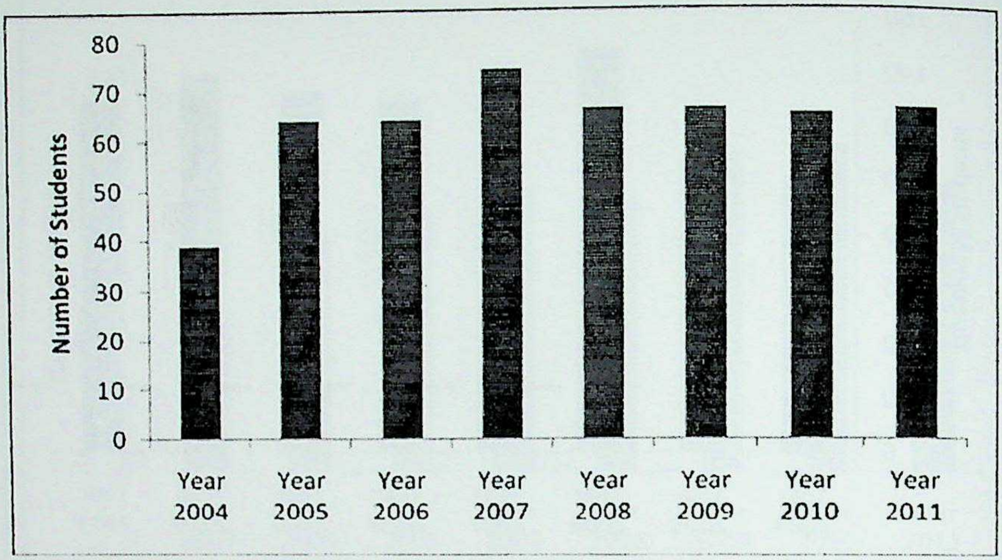

Fig. 9: Roll statement of boys primary school Uthoora from 2004-2011.

The roll statement of boys middle school, Wanpora from 2004 to 2011 is given in Table 10 and graphically presented in Figure 10. The data reveals that during the study period the highest roll was present during the year 2011. The study revealed that in on an average 7.91% increase in enrollment was observed in the boys middle school, Wanpora during the study period (Fig.11, page 13).

**Table 10: Roll statement of boys middle school, Wanpora from 2004-2011.**

| Year | Total Roll |
|---|---|
| 2004 | 189 |
| 2005 | 192 |
| 2006 | 213 |
| 2007 | 262 |
| 2008 | 269 |
| 2009 | 303 |
| 2010 | 315 |
| 2011 | 317 |

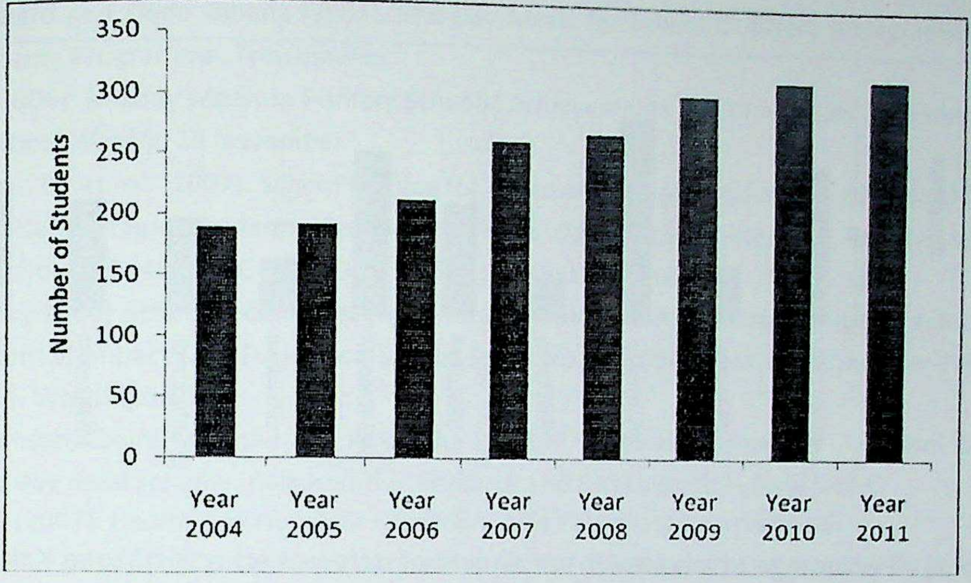

Fig. 10: Roll statement of boys middle school, Wanpora from 2004-2011.

The percentage of increase in enrollment of ten different schools of zone Kakapora is given in the Table 11 and graphically presented in Fig 11. The data reveals that the mid-day meals programme has played a tremendous role in the universalization of elementary education by increasing the percentage of enrollment in different schools of Zone Kakapora,

**Table 11: Percentage of increase in enrollment of different schools of zone Kakapora**

| Name of School | Percentage |
|---|---|
| UPS Dougam | 7.63 |
| UPS Marvel | 2.74 |
| UPS Uthoora | 9.84 |
| BMS Larve | 2.06 |
| UPS Lelhar | 5.51 |
| GMS Wanpora | 7.91 |
| GPS Pahoo | 2.73 |
| UPS Khadrimoh | 4.54 |
| MS Kakapora | 5.47 |
| UPS Kawoosibagh | 6.4 |

# INFORMATION AND COMMUNICATION TECHNOLOGIES (ICT) & DISTANCE LEARNING SYSTEMS

**Mohamad Irfan Dar** *
**Miss Qurat-Ul-Ain** **

## ABSTRACT

*Information and Communication Technology (ICT) is playing a vital role in distance learning to meet the requirements and expectations of the learners' in large scale. It is difficult to perform the same using any traditional institutional system due to its limited resources. ICT has various proven tools and technologies to meet the requirements of a learner at various phases of learning cycle viz the admission phase, the learning phase, the evaluation phase and finally the certification phase as a service[3]. Due to heterogeneous requirements in distance learning, there are issues and challenges that are to be addressed in usage of the technology and the service(s) being provided through ICT. The paper emphasizes the issues and challenges on the computing & network infrastructure, portability with respect to hardware & software and various learner support services. The paper also presents on security issues of a service in terms of its availability, authenticity, confidentiality and access control so that one can ensure a service to the utmost satisfaction of a learner in distance learning system.*

**Keywords:** Distance learning, ICT, availability, access control, confidentiality, Networks.

## Introduction

In distance learning system, learners are remote to the institution and are in large scale. It is difficult for a learner to visit the institution every day to get a service/support as available in a conventional system and at same time, it is even difficult to the institution itself to provide various services to the learners at different phases of a student learning life cycle, due to limited human resource available. Information and Communication Technology (ICT) is a prime resource to overcome such limitations and improve the Distance Learning System.

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Information and communication technology is group of technologies by which various support services shall be provided at different phases of student learning life cycle in distance learning system [1]. The various phases are the admission phase (programme details, fee structure, admission procedure and registration & re-registration), the learning phase (learning schedule, programme delivery(lectures through video conferencing, webinars, audio & video programmes, multimedia presentations and case studies), the evaluation phase (examination schedule, internal &external assessment, examinations, improvement, valuation, revaluation and result declaration) and the certification phase ( marks/grades updates, certificate printing & issuing and convocation schedule).

In conventional system, learners are able to interact with one another face-to-face, which is a prerequisite to more meaningful social intercourse. Since, there is no such facility in the Directorate of distance Education, a web-based student learning and support system shall be developed and implemented using ICT to provide services at all different phases in student learning life cycle and also for knowledge and information sharing as done in a conventional system of education[3].

Courses can be offered online or blended with face-to-face instruction utilizing the information technology and interactive learning techniques that have evolved from last 20 years [4].

## Infrastructure in Distance Learning

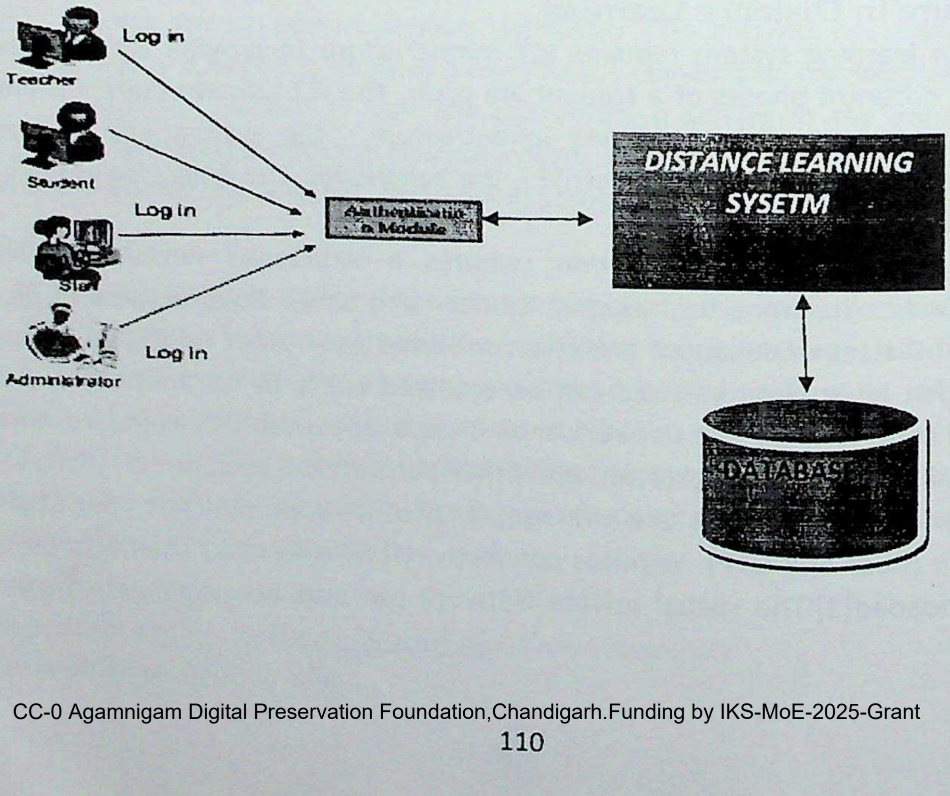
Distance learning system requires ICT infrastructure to provide various services effectively at different phases of a student life cycle. The ICT infrastructure include the network infrastructure, the computing infrastructure, the system and application software, the Internet Service Provider(ISP), the bandwidth, the policy framework and the security infrastructure.

The distance Learning institution requires a structured network at all its operational nodes (headquarter, regional Centers and other study centers in case of Directorate of Distance Education) and interconnected each other through a dedicated network so that all student services can be accessed easily by all operational nodes, students and other public. The network shall include adequate and standard network components that are used at gateway and other parts of the structured network. The standard network components are the router, the network switches, the standard network cable (fiber and UTP). Wireless connectivity (Wifi/Wi-max) shall also be used, where ever needed[3].The virtual private Network can also be employed to give the authorized access around all the regional centres and study centers across the state in case of Distance Education Kashmir University.

The standard computing infrastructure include standard computer hardware such as servers(database servers, web servers, backup/recovery servers and application servers) to host various student learning and support services and personal computers (desktop computers, laptops and net books) to access and use services. The servers should be able to support the database of large sizes which would facilitate the Data warehouse System. ICT can be used to facilitate the online extension lectures from different parts of the world which could be telecasted live across all the centres using the IP TV's, so, a good infrastructure of multimedia equipment's would have to be employed to achieve the same.

Security infrastructure is essentially required to protect the systems(servers and personal computers), software, applications and the data that are being used in an institution, where student learning and support services are made available in distance learning system. There shall be proper implementation of the security equipment's which would monitor the incoming and outgoing traffic.

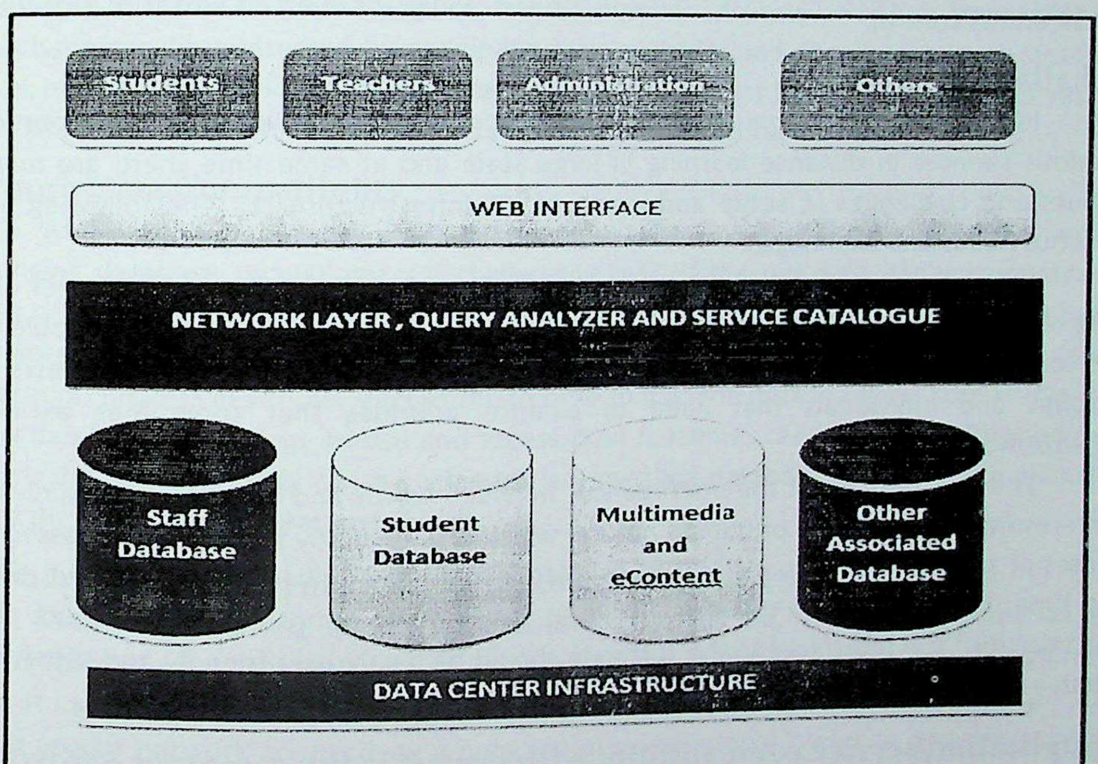
## Interactive Mode of the Proposed Use of ICT



## System and application software

The system and application software is required to develop software for various student learning and support services that are needed at various phases of student learning life cycle. The software is a main area in distance learning by which various support services shall be provided to students and other public in large scale. The trusted technology should be used to develop the software application that could be used by all students, Teachers, Administration, and other people who are associated with the Distance Learning. The below diagram outlines the high level structure of the software. There should be a user friendly web interface for the users.

**HIGH LEVEL DIAGRAM OF ICT SOFTWARE INFRASTRUCTURE FOR DISTANCE LEARNING**


Students
Teachers
Administration
Others
WEB INTERFACE
NETWORK LAYER , QUERY ANALYZER AND SERVICE CATALOGUE
Staff Database
Student Database
Multimedia and eContent
Other Associated Database
DATA CENTER INFRASTRUCTURE

## Internet service provider (ISP) and internet bandwidth

Internet bandwidth is needed to access web-based student learning and support services. The amount of internet bandwidth required is directly proportional to the number of users, who access the service(s) and is one of the parameters to access a service easily with no time[3] . The accessibility of a service depends on the availability of internet bandwidth reserved in a particular institution, where service is hosted. The internet service provider is an organization who provides internet bandwidth. The Directorate of IT & SS Kashmir University is one open choice as ISP for the Directorate of Distance Education Kashmir University.

## Policy document

Policy document covers various policies that are to be enforced in an institution where student learning and support services are made available in a distance learning system. The policies shall broadly categorized to operational policies, behavioral policies, resource access(system, service and network) control policies, security policies and organizational policies. The policy document is dynamically changed based on need and deed. The policy document helps to setup the ICT infrastructure properly and to have access control.

## Challenging Issues

Information and communication technologies playing a prime role in supporting various services in distance learning in large scale and at same time there are many issues and challenges in setup and usage of ICT infrastructure [2]. The following are various issues and challenges:

Although it seems the (e-) learning architecture is the perfect solution for the prevention of spatial problems and detrimental practices it cannot solve the problems as long as there is a difference between *knowing* and *doing*, different interests of groups and individuals that need to balance priorities that sometimes exclude themselves.

The question about the discrepancy "between words and actions" is certainly an interesting phenomenon of human nature, which is particularly materially expressed in cases of spatial interventions[5]. This problem can be best solved by carrying out time to time interactions and trainings, so as to develop an atmosphere of conduct and satisfaction. The Interfaces in the software should be highly user friendly and satisfying with a proper user guide.

## Application/service compatibility with respect to the computer hardware and software

Technology is changing very frequently, but it is difficult every time to develop application software for various services using such technology. New technology has always flexible features that are needed in Distance Learning system to meet the demands of the learners in large scale, but it is a challenging task to choose ideal hardware and software that have compatibility with existing application software.

Application compatibility with respect to hardware and software can be achieved by placing platform independent infrastructure (the hardware, software and application).

## Scalability Issues

Distance learning is a more flexible education system than any other conventional education system. Due to this, the student enrollment is very high and at same time expectations from learners also high. As learners are more in scale and remote to the institution, most of the activities being performed remotely through the online services that are provided by the institution. Since, the learners and their usage is increasing progressively, time to time ,it is a challenging issue to maintain always scalable resources in terms of memory space, handle number of users and their transactions. This issue can be addressed by anticipating the scalable load at network level, system level, application/service level and data storage level at least for a period of 2 to 3 years and place an adequate computing, storage and network infrastructure.

## Ensure Data Compatibility

As database technology is changing time to time, ensuring data compatibility with changing database technology is a challenging task. If the old data is not compatible with new database technology, it is very difficult to use and access data through various services/applications. Data compatibility problem can be achieved by encouraging data migration process in various stages time to time so that the data is always compatible to new database technology to use and access it all the times. And the other method by which data compatibility can be achieved is a detailed database design in compliance with the Normalization Patterns.

## Dedicated network connectivity among various operational nodes

In distance learning system, learners are remote to the institution in many ways and getting services through one of its operational nodes (the headquarters, regional and study centres in case of Distance Education Kashmir University). It is a difficult to have proper network connectivity among various operational nodes to provide/access services due to non availability of technical manpower. This problem can be achieved by establishing dedicated network connectivity among various operational nodes in form of intranet by using MPLS/VPN technology.

## Support Services

In distance learning system, learners are remote to the institution many ways and require various online support services to perform their activities. Since distance learning is a flexible system, the operational policies need to be changed frequently and is difficult to provide updated support services in time due to laps at various levels in the system. This problem can be addressed by involving all related personnel at the time of initiation of an activity so that its impact, if any on existing services can be discussed and find timeframe to provide support services in time.

## Manpower inline with change in technology

As technology is frequently changing time to time, it is a difficult task to have updated manpower inline with change in technology. It is even very difficult to have such manpower in government organizations. This problem can be achieved by introducing brainstorming and counseling sessions time to time and also to impart training/workshops on change in technology time to time.

## Security in Distance Learning

In distance learning, many online learning and support services are made available to its learners and other public. As usage of services is increasing day by day, at same time hackers/attackers are playing a vital role to deny the service and damage system resources. Security is essential to protect the resources from hackers and in turn protect the sensitive information and data.

Hackers take advantage of different security flaws in a network service, hosting infrastructure and exploit the vulnerability to compromise the system. The following are various security flaws by which a hacker will play a role:

- Lack of proper hardening of Servers
- Insufficient network boundary security controls
- Flaws or bugs in application/service software
- Insecure design and coding of hosted software (OS, application, etc)
- Weak passwords
- Social engineering
- Lack of operational control

The following are some of the policies to be implemented for smooth functioning of ICT infrastructure in distance learning system:

- Network security policy
- Host/ Server security policy
- Application software security
- Database security
- Content management policy
- Web server logging policy
- Backup a policy

- Password management policy
- Encryption policy
- Audit, Incident handling and Recovery policy
- Physical security policy

## Conclusion

ICT is really playing a vital role in distance learning but at same time there are many issues and challenges that are to be addressed for smooth functioning of various online services that are to be implemented for its learners and other public. In this paper, the required ICT infrastructure and various issues and challenges in usage and setting up of ICT infrastructure in distance learning are addressed. The institutions in general and Directorate of Distance Education in particular should look at all the addressed issues and challenges and take necessary precautions with a proper action plan along with timeframe.

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# WOMEN EMPOWERMENT THROUGH INFORMATION & COMMUNICATION TECHNOLOGY (ICT)

T. A. Chishti*

## ABSTRACT

*The Main objective is to discuss the empowerment of women through information and communication technology (ICT) particularly about Indian women in comparison to the women outside India. This paper also discusses the lack of infrastructure with regard to ICT in India and role of some government and non-governmental agencies including Distance Education to overcome this problem.*

## Introduction:

Information & Communication Technology have been playing an important role in social & economic development of nations. We all know that this century belongs to the power of knowledge and information.

The developments in ICT have reduced the geographical barriers and invent of computers have enhanced the capacity to accumulate and access information. IT together with communication Technologies has brought about unprecedented changes in the way people communicate, conduct business, pleasure and social interaction. With the emergence of IT on the national agenda and the announcement of ICT policies by various state Governments have recognized the convergence of core technologies and E-Governance as the tool for good governance, sustainable development, globalization of economy and social empowerment.

The possibilities for information access are infinite. But the access to these technologies is unequal.

This varies from place to place. This inequality contributes to increasing the gap between those who have access to information and those who are deprived to this access.

The major deprived group in this is women. They are not only underrepresented in terms of access to these technologies they do not get a fair deal in many social transactions. A large group of working women of India is in the rural and unorganized

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sectors. Socially the majorities of Indian women are still traditional and are in a disadvantageous position. Inequality in women's access to and participation in all communication systems, especially the media, and their insufficient mobilization to promote women's contribution to the society. It is a commonly held view that women are less engaged with ICTS than men. ICT's are for everyone and women have to be an equal beneficiary to the advantages offered by the technology. In the context of knowledge sphere, the issues of gender equality, equity and empowerment of women become even more significant as women have a strategic role in incubation and transfer of critical knowledge, which often forms the basis of survival for women.

## Reasons for the Inequality:

The reasons for this gender inequality as far as ICT is concerned are:

- Lack of clear National policy for promoting ICT for women development
- Poor ICT infrastructure
- Poor literacy among women
- Inadequate computer skills
- Limited online facilities
- Unaffordable costs of computers hardware & software

A nation that wants to progress cannot afford to ignore capacity building and empowerment of women. In India women have limited access to technologies. However, there are now enough experiences to show that when women are trained they show remarkable understanding and control in using technologies effectively. In India women comprise a large portion of the rural population and play a substantial role in the rural sector in particular and to the whole nation in general.

Poverty and lack of economic power is borne much more by women than men, especially as reported in the African and Asian research. As a result, women have much less access to disposable income for expenditures related to education. Women are generally not engaged in their own economic activities and very few women have money. In many cases, their husbands bar them from making money. Since they need consent from husbands to obtain loans, some women may have no access to lending institutions.

Gender sensitivity is perquisite that must prevail and be strengthened at all levels. Technological interventions assume a greater and more vital role especially when viewed globally.

The number of women who have used PC at some point of time has increased since the year 1996 but the ratio is still very less compared to the other gender but this ratio is becoming very narrow. If we compare India with some other nations like China Japan, Malaysia and Indonesia where the situation was more or less the same a few decades ago. But the programmes introduced by the government and the private partners played an important role and the things are different at present visa women empowerment.

The under representation of women in Science & Technology requires a larger awareness and the various schemes at the governmental level , NGO level and the role of Distance Education cannot be ignored in this direction. With regard to the Distance Education the Indria Gandhi National Open University (IGNOU) and many other Open and Distance Learning institutes in India are offering number of programmes by virtue of which women in large number can train themselves in computer related courses and can be self dependent which can be one of the factors to be empowered. Greater concentration is needed on the use of ICT for gender empowerment.

In the Commonwealth Asian countries most of the ODL enrolment figures cited was much closer to parity between male and female students, with the exception being those presented for India. The Sri Lanka report finds no gender disparity in women's enrolment in schools and tertiary educational institutions, and no apparent difference in trends between conventional universities and ODL institutions.

Women represent 60% of the students following external degree programmes in Malaysia, 46% of the students at the Institute for Distance Education at

University Putra Malaysia is women, and in Pakistan, 43% of AIOU students are women. However, in India, the enrolment of women in Indira Gandhi National Open University (IGNOU) was 28.4% around five years ago.

The most effective way to ensure access by women to ICTs for ODL is to use appropriate technology. ODL should be learner-centered, and the medium should be selected based on an assessment of the learner needs, taking into account the desired knowledge and skills, as well as the broader technical environment. For all these reasons, using appropriate technology would rule out the use of computer-based ICTs for ODL for many countries and regions. However, while acknowledging this reality none of the regions wanted to cut off any part of their population from the potential benefits of the digital revolution in the long term. One proposal to reduce the barriers around the use of computers for ODL was recommended by many countries: to provide a low-end computer service including storing and forwarding e-mail, e-mail based services such as mailing lists, and provide e-mail-enabled access to websites.

A combination of the impact of all the above factors, illiteracy, poverty, time famine and sociocultural restrictions, can severely restrict a woman's mobility. This lac of mobility can affect woman's ability to get benefit from educational opportunities whether they are offered through traditional or through ICTs if she needs to travel some distance to access the courses, or if the courses are offered at a time or place that is either unsafe or culturally prohibited for them. One of the most significant barriers to women is the access to education.

In rural areas where isolation and poor infrastructure services are often the norm, telecommunications can play an extremely important role in enhancing rural social and economic development. Women's full and equal access to ICT based economic and educational activities supports women's contribution in both business and home based activities and improves women's socioeconomic stutus, strengthens the family and provides access to information, communication, and freedom of expression.ICT also provide options for women overcoming illiteracy, creating opportunities for entrepreneurship allowing women to work from home and care for their families, accessing ICT from rural locations and enhancing and enriching their quality of life.

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# COMPARATIVE ADVERTISING WITHIN PERMISSIBLE LIMITS

**Syed Asima Refayi**[*]

## ABSTRACT

*The essence of comparative advertising is expressed by the old slogan "anything his can do mine can do better." In other words comparative advertising is advertising where one party advertises his goods or services by comparing them with the goods or services of another party. Such other party is usually his competitor or the market leader of that good or service. The comparison is made with a view towards increasing the sales of the advertiser, either by suggesting that the advertiser's product is of the same or a better quality to that of the compared products or by denigrating the quality of the compared product. By recognizing the right of an advertiser truthfully compares its products to those of a competitor, comparative advertising can be viewed as a vehicle of expression that assists consumers in making informed. Trade rivalries and comparative advertising have been an old phenomenon in the advertising world and the customers have witnessed innumerable product wars on their television sets. The concept of comparative advertising emerged in the nineties. The nineties era witnessed the Pepsi-Coke war which was followed by Complan-Horlicks tug of war and the latest in the basket is the Rin-Tide war. All these advertisements disparaged the competitor's product to showcase the superiority of their product in the market. The key to comparative advertising lies in the depiction of the rival goods in a discreet yet assertive fashion. India does not have in place dedicated statue governing the area of Comparative Advertising. Comparative advertising compares alternative brands on price or other measurable attributes, and identifies the alternative brand by name, illustration or other distinctive information. In recent years, comparative advertising has become a multibillion dollar business and has challenged courts with new, complex legal issues related to the rights of consumers, advertisers and their competitors.*

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# COMPARATIVE ADVERTISING WITHIN PERMISSIBLE LIMITS

**Key Words:** Advertising, Comparative, Consumer Rights, Constitutionality, Freedom of speech and expression, Puffing, Statutory Recognition, Judicial Recognition, Restrictions, Limitations

## Introduction

Comparative advertising is an advertisement in which a particular product, or service, specifically mentions a competitor by name for the express purpose of showing why the competitor is inferior to the product naming it. Comparative advertising, also known as 'knocking copy', is loosely defined as advertising where "the advertised brand is explicitly compared with one or more competing brands and the comparison is oblivious to the audience."[1]

This should not be confused with parody advertisements, where a fictional product is being advertised for the purpose of poking fun at the particular advertisement, nor should it be confused with the use of a coined brand name for the purpose of comparing the product without actually naming an actual competitor. ("Wikipedia tastes better and is less filling than the Encyclopedia Galactica.")

In United States, Federal Trade Commission (FTC) defined comparative advertising as:

> *"advertisement that compares alternative brands on objectively measurable or price, and identifies the alternative brand by name, illustration or other distinctive information."*[2] *This definition was used in the case Gillette Australia Pty Ltd v Energizer Australia Pty Ltd.*[3] *Similarly, the Law Council of Australia recently suggested that comparative advertising refers to "advertising which include reference to a competitor's trademark in a way which does notimpute proprietorship in the mark to the advertiser."*[4]

Comparative advertisements could be either indirectly or directly comparative, positive or negative, and seeks "to associate or differentiate the two competing brands".[5] Different countries apply differing views regarding the laws on comparative advertising.

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[1] *New Kids on the Block v. New Am. Pub., Inc.*, 971 F.2d 302, 305, 23 U.S.P.Q.2d (BNA) 1534, 1536 (9th ed)

[2] Jerome G. Lee, Comparative Advertising, Commercial Disparagement and False Advertising, 71 TRADEMARK REP. 620 (1981).

[3] *Smith v. Chanel, Inc.*, 402 F.2d 562, 567, 159 U.S.P.Q. (BNA) 388, 392 (9th Cir. 1968)

[4] Sharad Vadehra, Comparative Advertising: Increasing Incidents in India, Kan and KrishmeAttorney's at Law

[5] Margaret Niangsiamkim, Anchor Ruling on Comparative Advertising Use of "FIRST" and "ONLY" ,

## Effectiveness of Comparative Advertising

Comparative advertising has been increasingly implemented through the years, and the types of comparative advertising range from comparing a single attribute dimension, comparing an attribute unique to the target and absent in the referent and comparisons involving attributes unique to both brands.[6] The contributing factors to the effectiveness of comparative advertising include believability,[7] which refers to the extent a consumer can rely on the information provided in comparative advertisements, the level of involvement,[8] and the convenience in evaluation,[9] provided by spoon feeding the consumer with information that does not require extra effort in recall.[10]

Comparative advertising is generally coupled with negativity, as evidenced by early industry condemnation.[11] Stating reasons such as participation in comparative advertising damaged the honour and credibility of advertising. Studies have suggested that negative information can be stored more effectively,[12] thus generating the impact that any advertisement is purposed for, and more importantly, strong recall.[13] On the contrary, such negativity can either be transferred directly to the brand and the consumer's impression of the brand, various studies through the years have proven that comparative advertising has been responded to negatively.[14]

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Available at: http://vlex.in/vid/colgate-anchor-comparative-first-only-215846111tion 15 U.S.C. 1125(c) (1996)

[6] 15 U.S.C. § 1125(c) (1996)

[7] Filippo M. Cinotti, "Fair Use" Of Comparative Advertising Under The 1995 Federal Dilution Act, IDEA The Journal of Law and Technology 1996, 37 IDEA 133

[8] Jerome Gilson, A Federal Dilution Statute: Is It Time?, 83 TRADEMARK REP. 108, 114 n. 15 (1993).

[9] *Filippo M. Cinotti, "Fair Use" Of Comparative Advertising Under The 1995 Federal Dilution Act, IDEA The Journal of Law and Technology 1996, 37 IDEA 133,at p7.*

[10] *Chemical Corp. of Am. v. Anheuser-Busch, Inc.,* 306 F.2d 433, 134 U.S.P.Q. (BNA) 524 (5th Cir. 196 (insecticide manufacturer enjoined from imitating Budweiser's beer slogan, "where there is life there is bud," with its motto "where there is life there is bugs" on the grounds that it tarnished the reputation of plaintiff's trademark).

[11] *Prestonettes, Inc. v. Cody,* 285 F. 501, 508 (2d Cir. 1922), rev'd, 264 U.S. 359 (1924).

[12] When the defendant refers to the plaintiff's trademark to describe the characteristics or the source of the defendant's goods, the trademark is deemed to be used in a descriptive way.

[13] *New Kids on The Block v. News America Publishing, Inc.* 971 F.2d 302, 23 U.S.P.Q.2d (BNA) 1534 (9 Cir. 1991)

[14] Nominative fair use involves the descriptive use of the plaintiff's mark to describe or identify the plaintiff's goods or services.

## Constitutionality of Comparative Advertising

In a democratic economy, free flow of commercial information is indispensable and advertisement is a facet of "Commercial Speech" is a part of Freedom of Speech and Expression guaranteed under Article 19 (1) (a) of the Indian Constitution.

This freedom has been available for public speaking, radio, television and press. However, the freedom of speech and expression has limitations. Article 19(2) permits the state to limit the freedom in so far as such law imposes reasonable restrictions ... in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

The question had arisen before the Supreme Court whether advertisement was 'commercial speech' and, thus, had the protection of Fundamental Right under Article 19(1)(a). The Supreme Court had maintained in its judgment "commercial speech" cannot be denied the protection of Article 19(1) (a) of the constitution merely because the same are issued by businessmen.[15] The Supreme Court was categorical in its position in the *Tata Yellow Pages Case*: Advertising as a "commercial speech" has two facets. Advertising which is no more than a commercial transaction is nonetheless dissemination of information regarding the product advertised. Public at large is benefited by the information made available through the advertisement. In a democratic economy free flow of commercial information is indispensable. There cannot be honest and economical marketing by the public at large without being educated by the information disseminated through advertisements.

The economic system in a democracy would be handicapped without there being freedom of "commercial speech."[16]The Supreme Court had examined from another angle, the public at large has a right to receive the "commercial speech". Article 19(1) (a) not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech. So far as the economic needs of a citizen are concerned, their fulfillment has to be guided by the information disseminated through the advertisements. The protection of Article 19(1)(a) is available to the speaker as well as to the recipient of the speech. The recipient of "commercial speech" may be having much deeper interest in the advertisement than the businessman who is behind the publication.[17]

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[15] *Tata Press Limited vMahanagar Telephone Nigam Limited and Others*, judgment of the Supreme Court, dated, 03/08/1995. Citation: 1995 AIR(SC) 2438.

[16] Ibid

The Supreme Court was significantly led by Judgment of the American Courts. The American Courts in 1940s had doubts if advertisement could be protected by the freedom of speech. This doubt had reflected in the Indian Supreme Court's decision in 1960 in the *Hamdard Case.*[18] The Supreme Court, giving the judgment in the Tata Yellow Pages Case in 1985, in the backdrop of revisions which had taken in the position of the American courts, was categorical held that "commercial speech" is a part of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution.[19]

No doubt, the freedom is subject to restrain under Article 19(2). However, in the order of rights, 'commercial speech' has to be privileged and curtailed only to the extent it is reasonable for protection of general interests. Understandably, the courts have taken the position that 'publicity and advertisement of one's product with a view to boosting sales is a legitimate market strategy[20].In fact, following the position of American courts, the Commission has recognised even 'a certain degree of puffing up of one's product[21].

The Commission has followed the Constitutional freedom:

> *A party has a right to advertise its product making commendation about its quality. Advertisement being a commercial speech whichis a part of the freedom of speech is guaranteed under article19(1)(a)of the Constitution.*[22]

In case of *Unibic Biscuits India Pvt. Ltd. v. Britannia Industries Ltd.*[23], the Court laid down that the comparative advertisement is permissible, so long as such comparison does not disparage or denigrate a trade mark or the products of a competitor. The comparison of different features of two products showing the advantages, which one product enjoy over the other is also permissible provided such comparison stops short of discrediting or denigrating the other product.

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[17] Id

[18] *Hamdard Dawakhana (Wakf) LalKuan, Delhi and Another* v. *Union of India and others*, a judgment o the Supreme Court. Citation: [SCR 1960 (2) 671].

[19] Supra Note 15

[20] *M. Balasundramv Jyothi Laboratories*, judgement of the MRTP Commission, 10/10/1994. Citatio 1995 (82) CC 830

[21] Ibid.

[22] *Hindustan Lever Limited* v *Mudra Communications Limited and Another*, decision of the MRTP dated 28/08/2001, Citation: 2002 (50) CLA 1.

[23] AIR 2008 (NOC) 2496 (Kar).

## COMPARATIVE ADVERTISING WITHIN PERMISSIBLE LIMITS

Though the defendant has every right to market its product by claiming that his product is superior in quality, yet at the same time the freedom of expression i.e., the right to advertise does not permit to go to that extent so as to cause damage or irreparable injury to the product of others. It is clear manufacturer of Good Day biscuits and the appellant is manufacturer of Unibic cookies i.e., biscuits. Admittedly, the appellant issued advertisement in various newspapers containing the words "No more good days only great day" "why have a good day, when you have a great day, "why have a good day, when you can have a great day". Further in one of the frames in TV ads, the word "Forget the Good" is used wherein a picture pushing the "Good" biscuit pack shown. From the words used in the advertisement, it is clear that the same are intended to cause damage and loss to the product of the respondent. Prima facie, it appears that in all the advertisement, the aim of the appellant is to inform the customers not to buy "Good Day" products of the respondents. In its advertisements, the appellant besides saying / advertising that its products are superior but are also indirectly suggesting the consumers not to buy the Good Day product of the respondent. There is resemblance of Good Day product of respondent with the product depicted in the advertisement. In the TV ads, issued by the appellant, in one of its frame, it is mentioned "Forget the Good" by pushing the pack, which is similar to the product of the respondents. The advertisement issued by the appellant does not stop by saying that its product are superior, but it further continues to say that the product of the plaintiff respondents are not good. Prima facie, it appears that the advertisement issued by the appellants creates an impression on the minds of the consumers to buy the products of the appellant instead of the respondent's not because it is superior than the product of the respondent, but because product of the respondent is bad. The words used in the paper advertisements are more clear and attacking on the products of the respondents. Thus it is prima facie clear that the advertisements issued by the defendant – appellant are intended to degrade and defame the product of the respondent – plaintiff which amounts to disparaging the product of the respondent – plaintiff which is not permissible under law. The appellant is restrained from issuing for print or telecasting the impugned advertisements in the same form or in any other form disparaging the product of the plaintiff / respondents till the disposal of the suit. However, at this preliminary stage of the suit Court cannot grant a relief which is of mandatory in nature. Thus, operative portion directing appellant to remove the word "Good Day" from the impugned news paper advertisements and the word "Forget the Good" and "Pack" from the TV ads frame is modified.

Like the Indian law, Jurisdictions in UK and U.S.A allow comparative advertising, since comparative advertising provides consumers with information about both parties' products through a quick comparison, effectively results in lower prices, encourages competition and helps to prevent monopolies. In the United States, maximizing consumer welfare and promoting a free and competitive economy has been the guiding objective and "the keystone of governmental attitude towards the business scene" for more than 100 years. Thus, in US comparative advertising has been a well-recognized and acceptable form of advertising, and enjoys the additional protection of freedom of speech laws. The 1969 Federal Trade Commission (FTC) Policy Statement on Comparative Advertising encouraged the use of comparisons that name the competitor or the competitive product. However, the negative consequences of false and confusing comparative claims led the FTC to require "clarity, and, if necessary, disclosure to avoid deception of the consumer."

For example, in case[24], Nature Labs, a shop selling pet perfumery, used "Tirnmy Holedigger" as its trademark as well as the slogan "if you like Tommy Hilfiger, your pet will love Timmy Holedigger". Tommy Hilfiger, one of the best recognized U.S. fashion labels, brought a lawsuit against Natural Labs for, among other things, trademark infringement, unfair competition, trademark dilution and commercial fraud. The court held that the use of a trademark similar to Tommy Hilfiger by the defendant is a fair parody, a type of "freedom of speech[1]' protected under the First Amendment of the United States Constitution. Consumers were more likely to laugh at the humor in the parody than be confused about the origin of the products. Moreover, the comparison used by the respondent did not depreciate the claimant's products in any means. Therefore, the court dismissed all of the plaintiffsclaims.

The UK has a relatively liberal regime permitting comparative advertising. The European Standing Committee of the UK Parliament debated the issue of comparative advertising in November 1995 and stated that the government viewed this type of advertising as a legitimate, useful and effective marketing tool which 'we believe stimulates competition and informs the consumers. Section 4(1) (b) of the 1938 Act was replaced in the new Act by Section 10(6). Also relevant is Section 11(2), which has been held to permit fair comparisons of goods, for example, indications of quality or price.

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[24] *Tommy Hilfiger Licensing Inc.* vs. *Nature Labs* LLC [2002]

The primary objective of section 10(6) is to permit comparative advertising, as stated clearly by *Laddie J in Barclays Bank* v. *RBS Advanta*. Since the TMA 1994 came into force, there have been a number of decisions under section 10(6)[25].

## Statutory Recognition of Comparative Advertising in India

The basic legal structure has been laid down by the Monopolies of Restrictive Trade Practices Act, 1984 (M.R.T.P Act) and the Trade Marks Act, 1999 (T.M.A.) It's interesting to note how the earlier law came into place. The Government of India, in 1964 appointed the Monopolies Inquiry Commission to inquire into the extent and effect of concentration of economic power in private hands and the prevalence of monopolistic and restrictive trade practices in important sectors of economic activity.[26] Along with the report that the Commission submitted was a draft bill (The Monopolies and Restrictive Trade Practices Bill, 1965) which was passed as the M.R.T.P. Act, 1969. The initial purpose behind the Act was the control of monopolies and prohibition of restrictive trade practices;[27] however the Act was amended several times to suit the changing circumstances until it was finally rendered obsolete by the economic reforms of 1990s as stronger pro-competition laws were required.

Section 36A of MRTP Act lists several actions to be 'unfair trade practices'.[28] Unfair trade practices in comparative representation include any promotion of goods or services that deceives or gives false information regarding the goods or services of another person. Other instances of unfair trade practices include the adoption of any unfair or misleading methods or practices in the representation of goods and services.

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[25] These include *Barclays v. RBS Advanta, Vodafone v. Orange, British Telecommunications v. AT&T , Barclays, BT,* Macmillan Magazines was an application for interlocutory injunction and Vodafone was a trial. It is interesting to note that in all of these cases the plaintiff was unsuccessful, with judgments being firmly in favour of comparative advertising in general

[26] *See* Anurag K. Agarwal, *Competition Law in India: Need to Go Slow and Steady*, IIM Ahmedabad, W.P. NO. 2005-10-05, Oct. 5, 2005, http://www.iimahd.ernet.in/publications/data/2005-10-05anurag.pdf.

[27] Monopolies and Restrictive Trade Practices (Act No. 54 of 1969), Statement of Object and Reason.

[28] The provision which pertains to comparative representation is contained in § 36A(1)(x) o f the Monopolies and Restrictive Trade Practices Act, 1969 which reads as follows: "Definition of unfair trade practice: .... "unfair trade practice" means a trade practice which, for the (1) the practice of making any statement, whether orally or in writing or by visible representation which,- xxx(x) gives false or misleading facts disparaging the goods, services or trade of another person."

The entire concept of 'disparagement of goods of another person' thus flows from th MRTP Act.

The Trade Marks Act, 1999 came into place after The Trade and Merchandise A Marks Act, 1958 was repealed. "India enacted its new Trademarks Act 1999 (the TM Ac and the Trademarks Rules 2002, with effect from 15th September 2003, to ensu adequate protection to domestic and international brand owners, in compliance wi the TRIPS Agreement."[29] Certain rights of trademark owners were extended – such a the protection of trademarks was extended to cover not only goods but services as we However another provision of the TMA imports a defence to an otherwise infringing us of a trademark. This can be seen as a delicate balancing of interests – the rights of th trademark owners on one hand and the consumers' interest in informative advertisin on the other.

The various legislative developments and amendments in the law governin competitive advertising in India have gone hand in hand with India's econom Comparative advertisement is permitted by section 30 of the Trade Marks Act, 199 which allows the use of registered trademarks provided that it is honest use, that it doe not take unfair advantage of the trademark and that it does not damage the goodw associated with the trademark.[30] To infringe the use of a registered mark, the conditio stated in the relevant provisions of the Paris Convention[31] and the Tradema Approximation Directive[32] must be fulfilled. In other words, it must (a) be otherwi than in accordance with honest practices in industrial or commercial matters and (b) without due cause take unfair advantage of, or be detrimental to, the distinctive character or repute of the mark.[33]

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[29] *See* Priya Bansal, *Use of Trademark in Comparative Advertising: Situation in Ind* http://www.legalserviceindia.com/articles/tadv.htm.

[30] Section 30 of the Trade Marks Act, 1999 states: "Nothing in section 29 shall be preventing the use registered trademark by any person with the purposes of identifying goods or services as those the proprietor provided the use:-

a) is in accordance with the honest practices in industrial or commercial matters, and

b) is not such as to take unfair advantage of or be detrimental to the distinctive character or repu of the trade mark." But with certain limitations which are provided under § 29(8) of theTra Marks Act, 1999 which reads as:

A registered trademark is infringed by any advertising of that trademark if such advertising:-

a) takes unfair advantage and is contrary to honest practices in industrial or commercial matte or

b) is detrimental to its distinctive character; or

c) is against the reputation of the trademark."

[31] *See* Paris Convention for the Protection of Industrial Property, art. 10bis (2), Mar. 20, 1883, 6 I.L 806.

[32] *See* First Council Dir.89/104/EEC of Dec. 21, 1988.

The Trade Marks Act, 1999 provides protection against 'passing offfor registered trademarks as well as well known unregistered marks. The essence of an action of passing-off is confusion. The proprietor thereby has a statutory alternative to the common law action of passing off.

## Judicial Recognition of Comparative Advertising in India

Comparative advertising in India was initially covered by the MRTP Act, 1984 as being a potentially unfair trade practice. It was only after the recent enactment of the Trade Marks Act, 1999that some headway was made in the direction of comparative advertising is-à-vis intellectual property jurisprudence. However, as the said Act was only made enforceable in 2003, comparative advertising case law in India is yet to truly develop.

There are a significant number of comparative advertising cases decided by the courts under the MRTP regime. While the focus of these cases was largely on the protection of the consumer rather than the use of infringed trademarks, they provided the groundwork for the present legal stance towards comparative advertising in India.

In case of *Regaulv Ujala*[34],a television advertisement promoting Ujala liquid blue showed that 2-3 drops were adequate to bring striking whiteness of clothes while several spoons of other bands were required. A lady holding a bottle of Ujala was looking down on another bottle and exclaiming 'chhi, chhi, chhi!' in disgust. The manufacturers of Regaul, a competing brand, approached the Commission that the advertisement was disparaging its goods. The bottle did not have any label. The Commission elaborated the meaning of the provision: In order to bring home a charge under clause (x) of section 36A(1) it must be established that the disparagement is of the goods, services or trade of another. ... the words "goods of another person" have a definite connotation. It implies disparagement of the product of an identifiable manufacturer[35].

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[33] *See* Navpree Panjrath and Kanwardeep Singh, *Comparative Advertising- A Brief Overview*, 1MANUPATRA INTELLECTUAL PROPERTY REPORT A-200, A-203 (2007).

[34] *M. BalasundramvJyothi Laboratories*, judgement of the MRTP Commission, 10/10/1994. Citation: 1995 (82) CC 830.

[35] Ibid

The Commission was of the view that 'a mere claim to superiority in the quality of one's product[36] by itself is not sufficient to attract clause (x). In the advertisement, the bottle did not carry any label. Further, the bottle did not have similarity with bottle of any brand. The Commission, thus, was of the opinion that it could not be a case of disparagement of goods.

In case of*Novino Batteries*,the judgment of the Supreme Court in the Novino Batteries case has had an important influence on all cases raising questions about advertisements. Lakhanpal industries Ltd. had collaboration with Mitsubishi Corporation of Japan for manufacturing Novino batteries. Mitsubishi Corporation were the owners of the well know trade name, National Panasonic. Lakhanpal Industries, in its advertisements, was claiming that Novino batteries were made in collaboration with National Panasonic. This was technically incorrect as National Panasonic was only a trade name. Lakhanpal Industries could not have collaborated with a trade name. The Supreme Court ruled:

> When a problem arises as to whether a particular act can be condemned as an unfair trade practice or not, the key to the solution would be to examine whether it contains a false statement and is misleading and further what is the effect of such a representation made by the manufacturer on the common man? Does it lead a reasonable person in the position of a buyer to a wrong conclusion? The issue cannot be resolved by merely examining whether the representation is correct or incorrect in the literal sense. A representation containing a statement apparently correct in the technical sense may have the effect of misleading the buyer by using tricky language. Similarly, a statement, which may be inaccurate in the technical literal sense can convey the truth and sometimes more effectively too than a literally correct statement. It is, therefore, necessary to examine whether the representation complained of contains the element of misleading the buyer. Does a reasonable man, on reading the advertisement, form a belief different from what the truth is? The position will have to be viewed objectively and in an impersonal manner[37].

The court, following this, held that even though, literally, the representation made by Lakhanpal Industries was inaccurate, it could not be held to be an unfair trade practice. In the next case, we would see how the judgment in the Novino Batteries case found an application.

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[36] Id

[37] *Lakhanpal National Limited v. M.R.T.P. commission*, judgement of the Supreme Court, dated 02/05/1989. Citation: 1989 AIR (SC) 1692.

## COMPARATIVE ADVERTISING WITHIN PERMISSIBLE LIMITS

In case *Colgate* v *Vicco*[38],in a television advertisement promoting Vicco tooth powder, another tin, of oval shape and without any label is shown. White powder coming out from the can was described as useless. Colgate claimed before the Commission that this was disparaging its product Colgate toothpowder. The Commission found that the shape and colour combination of the can shown in the television commercial resembled Colgate's tooth powder can. Following the Novino Batteries case, the MRTPC noted that the advertisement did not explicitly mention Colgate. In fact, there may even have been no intention of depicting the can to be of Colgate. But since the advertisement created an impression in the viewers that the can was of Colgate, it would be a case of disparagement. The Commission took into account the nature of the Indian audience. Disparaging remarks about the uselessness of such toothpowder come through a mysterious invisible voice. It cannot be disputed that a TV set has become more or less a household kit and more than 90% of the country is covered by the TV Network. It cannot be gainsaid that illiteracy in India is all pervasive to the extent of 70% of the population. To the ignorant and illiterate people mysterious invisible voice would be likened to the voice of God. Such people might be inclined to believe that the white toothpowder contained in a red-and-white coloured oval-shaped can would be an absolutely useless substance. The issues involved in the case came to be emphatically emphasised in the context of inter-corporate competition in the *Colgate* v *Pepsodent case*.

In case of *Colgate Dental Cream- Double Protection*[39], in June, 1998, Colgate introduced its toothpaste as Colgate Dental Cream-Double Protection. (CDC-DP). It gave wide publicity through print and television that the toothpaste was 2.5 times superior to any ordinary toothpaste in fighting germs. Hindustan Lever Ltd. moved the Commission alleging that the advertisements disparaged toothpastes manufactured by it under various brand names. It contended that a reference to 'ordinary 'toothpaste was to all other bands than Colgate.

The word 'disparagement' is not defined in the Act, thus, the Commission explored its dictionary meaning. It noted that dictionaries define it as 'to dishonour by comparison with what is inferior[40]' 'bring discrediting or reproach upon; dishonour;

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56. *Palmolive(India)Ltd. Vicco Laboratories;*MRTP Comm.;dated 20/03/1997; 1997 (5) CTJ 488.

39 *Hindustan lever Limited v Colgate Palmolive (India) Limited,*Judgement of the MRTP Commission, 18/11/1998. 1999 (2) CPJ 7.

40 Chambers English Dictionary published by Allied publishers Ltd. in its 1992 reprint at p. 409.

lower in esteem; speak on or treat slightly or vilify; undervalue; and deprecate'[41]. Th Commission concluded:

> ... *for the purpose of disparaging something or some product, some comparison with what is inferior is necessary....disparagement oral act of disparaging would occur only by comparison with some identifiable product*[42].

The Commission was only reiterating the principle which was established in the Uja case. The Commission with approval quoted from the judgment:

> ... *the words "goods of another person" have a definite connotation. It implies disparagement of the product of unidentifiable manufacture*[43]*r.*

The Commission was of the view that a reference to 'ordinary' toothpaste do not identify any specific product. It noted:

> *The word 'ordinary' has to be understood in contradistinction With the word special, uncommon, unusual, extraordinary and the like synonyms. The word 'ordinary' is defined to mean customary, usual or normal, of the usual kind, not distinguished in any important way from others*[44]*.... not characterised by peculiar or unusual circumstances*[45]*'. The word 'ordinary' as an adjective would not refer to any particular or special item, product or thing.*

Thus, the Commission took the position that the claim of 2.5 times superiority CDC-DP over any ordinary toothpaste did not refer to any identifiable product or a identifiable manufacturer. As a result, it could not be a case of disparagement of goods

It should be noted that 'disparagement' is not the only ground for a advertisement to be an unfair trade practice. The same advertisement could still b contested as an unfair trade practice under Section 36A(1)(a) on the grounds misrepresenting quality. But this would be a different issue as to who could approach court and the remedies which could be availed. As a matter of fact, the Commissi took the view that there was nothing called an 'ordinary' toothpaste. Thus, a claim 2.5 times superiority was misleading and ordered the advertisement to be stopped.

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[41] In the new shorter Oxford English Dictionary published by Clarindon Press Oxford, 1993 at p 696.

[42] Supra note 39.

[43] Supra note 34

[44] In new Webster's Dictionary of the English Language at p. 667.

[45] In Black's Law Dictionary, 6th edition at p. 1097.

The leading judgments in this respect were the two *Reckitt & Colman cases*[46] . In the case of *Reckitt & Colman of India Ltd. v Kiwi TTK*[47] the Delhi High Court held that statements made by manufacturers claiming their product to be the best or puffing up their goods will not give a cause of action for disparagement. However, any statements that portrays competitors' similar goods in bad light while simultaneously promoting the manufacturers own goods is not permitted and will be tantamount to disparagement.[48] In the given case, both parties were in the business of manufacturing shoe polish. The defendants, whose brand name was 'Kiwi' marketed an advertisement comparing a bottle of their shoe polish with another bottle, marked as 'Product X' whereby the virtues of the defendant's product were extolled while disparaging the other unnamed product. The plaintiff claimed that 'Product X' bore a striking resemblance in design to their own product namely, 'Cherry Blossom' and that the advertisement disparaged its product. Based on the stated reasoning, the Delhi High Court granted an injunction against the defendants for the disparaging contents of the advertisement.

The Calcutta High Court took it a step further in the case of *Reckitt &Colman of India Ltd. v. MP Ramachandran&Anr.*[49] As per the facts of this case the plaintiffs were engaged in the manufacturing of blue whitener under the name of 'Robin Blue' for which they had a design registration over the bottle. The defendants, who were in the same business, issued an advertisement comparing their product to others stating that not only was their product cheaper, but also more effective. In this depiction they compared their product to a bottle having the same shape and pricing as that of the plaintiff's product. While holding that the advertisement was made with the intent to disparage and derogate the plaintiff's product, the Calcutta High Court laid down five principles in aiding the grant of injunctions in such matters, stating that:[50]

1. *A tradesman is entitled to declare his goods to be best in the world, even though the declaration is untrue;*

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[46] *See Reckitt & Colman of India Ltd.* v. *Kiwi T.T.K.*, 1996 P.T.C. 193 T 399 (hereinafter referred to as Reckitt Colman-1); *Reckitt & Colman of India Ltd.* v. *M.P. Ramachandran&Anr.*, 1999 P.T.C. (19) 741 (hereinafter referred to as Reckitt Colman-2).

[47] *See generally Reckitt Colman* 1, 1996 P.T.C. 193 T 399.

[48]. *Id.*, at 12.

[49] *See Reckitt Colman* 2, 1999 P.T.C. (19) 741.

[50] *Id.*, at 476.

2. *He can also say that my goods are better than his competitors', even though suc statement is untrue;*
3. *For the purpose of saying that his goods are the best in the world or his goods ar better than his competitors' he can even compare the advantages of his good over the goods of others;*
4. *He, however, cannot while saying his goods is better than his competitors', sa that his competitors' goods are bad. If he says so, he really slanders the goods o his competitors. In other words he defames his competitors and their goods, whic is not permissible;*
5. *If there is no defamation to the goods or to the manufacturer of such goods n action lies, but if there is such defamation an action lies and if an action lies fo recovery of damages for defamation, then the Court is also competent to grant a order of injunction restraining repetition of such defamation.*

These principles were used in the much publicized case of *Pepsi Co.Inc. v Hindustan Coca Cola Ltd.*[51] However, this case differed from the cases aforementione in respect of the fact that herein the Delhi High Court also dealt with copyrights an trademark related issues.

The plaintiff in the instant case claimed disparagement of trademark an copyright in two advertisements of the defendants. Both advertisements allegedl desecrated the plaintiff's products with derogatory remarks. One of the advertisement depicted a thinly veiled substitute of Pepsi as a "bachhonwali drink" while mockin Pepsi's advertising slogan by saying "YehDil Mange No More".[52] The entire commerci conveyed to the viewers that kids should prefer 'Thums Up' over 'Pepsi' if they want to grow up.[53]The court while using the principles laid down in the two aforementioned cases also went onto state that in order to decide questions of disparagement, the following factors have to be kept in mind, namely:[54]

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[51] 2001 (21) P.T.C. 699.

[52] Hindustan Coca Cola and others endorse their product with the help of a commercial wherein th lead actor asks a child which is his favourite drink. He mutters the word "Pepsi", which can be see from his lip movement though the same is muted. The lead actor thereafter asks the boy to tast two drinks in two different bottles covered with lids and the question asked by the lead actor is that "BacchonKoKonsipasandaayegi?" After taste the boy points out to one drink and says that tha drink would be liked by the children because it is sweet. In his words he says. "Who meethihai Bacchonkomeethi cheese pasandhai". He preferred the other drink which according to him tastes strong and that grown up people would prefer the same. And later the stronger one came out be "Thums Up", and one which is sweet, word "Pappi" is written on the bottle with a globe device an the colour that of the "Pepsi". The boy feels embarrassed about the fact that he chose "Pepsi" which he himself felt was a childrens' drink.:*See generally* Bansal, *supra* note 6.

1. *Intent of the commercial;*
2. *Manner of the commercial;*
3. *Story line of the commercial and the message sought to be conveyed by the commercial.*

Although it is unclear whether these factors are to be read conjunctively or disjunctively, the Delhi High Court used the second factor as the determining one. It ruled that if the manner in showing the commercial is only to show that the product is better without derogating somebody else's product, then no actionable claim lies. But if the manner of the commercials ridiculing or condemning the product of the consumer then it amounts to disparagement. In essence, this is reflective of the ratio of the *Reckitt &Colman* cases. Therefore, the Court while concluding that there was no disparagement also went onto hold, without precedent, that Pepsi's advertising slogan was copyrightable. The Court however also mentioned that mere use of the trademark protected Pepsi logo and parody of the slogan does notgive rise to *ipso facto* infringement.

In case of *Godrej* v *Vasmo*[55], the television commercial of Vasmo Hair dye opened with a lady dyeing her hair with instant hair dye, made by mixing hair dye and developer contained in two cylindrical bottles. The bottles were labeled as 'Sadharan' (ordinary). The picture then widened to show the anguish of the lady with falling hair. The commentary stated this to be the result of use of inferior dye containing harmful chemicals. The advertisement ended with the picture of "Vasmol 33 Hair Dye" which is stated to contain Ayurprash, a natural way of blackening the hair and strengthening the roots of the hair.

Godrej Ltd. was aggrieved with the advertisement. It had products like 'Godrej Hair Dye' and 'Godrej Kesh Kala' used for dyeing hair. Godrej's contention was that the pictorial depiction of two cylindrical bottles would identify it as its product. Godrej claimed its products were disparaged not only by insinuating that these contained harmful chemicals but also by calling these as 'Sadharan' (ordinary). The Commission stated the principles:

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[53] *See* Navpreet Panjrath and Kanwardeep Singh, *Comparative Advertising: Things You Can Do and Things You Can't*, http://news.indlaw.com/guest/columns/default.asp?navpreet.

[54] *See* Pepsi Co. Inc. v. Hindustan Coca Cola Ltd., 2001 (21) P.T.C. 722.

[55] Godrej soaps Ltd v hygienic Research Institute, judgement of the MRTP Commission, 30/05/2001. 2001 (43) CLA 300.

> *... disparagement could be by way of comparison through words, gesture, gimmicks pointing out indirectly to the inferiority of the informant's product*[56].

The Commission, however, in relation to the case noted:

> *Under the provisions of section 36A(1)(x) of the Act, the product of another manufacturer has to be identified before it can be said that the same has been disparaged by way of making false and misleading statements. The advertisement in question no doubt refers to instant hair dye and Godrej hair dye is one amongst many instant dyes available in the market. So are the two cylindrical bottles like that of Godrej in which are contained other various instant hair dyes. These in themselves are not sufficient to identify the informant's product which is one amongst many in the market contained in the similar cylindrical bottles like Vellatone, ROCCO, Royal, etc.*[57].

To summarise the interpretation of the Commission, an advertisement could disparage other products and yet, it would not be a case of 'disparagement' so long as the disparaged product is not identifiable. Is the law adequate to prevent unfair trade practice? In the Indian context, should the balance in interpreting the law not be tilted against such advertisement? The conflicting claims would need to be assessed in the context of constitutional provisions on the Fundamental Rights, privileging the freedom to speak.

The other advertisement was alleged to have copied substantial portions of the plaintiff's commercial thereby amounting to copyright infringement by the defendants.[58] The plaintiff also went on to claim that the portrayal did not constitute fair use or claim to be a parody. The court concluded that the commercial was nothing but a literal imitation of the plaintiff's work subject to minor and insufficient changes. As the commercial squarely violated the meaning of copyright under the statute,[59] the court granted an injunction to the effect that the defendant should be refrained from showing the advertisement in its present form.

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[56] Ibid

[57] Ibid

[58] The advertisement was concerning a roller coaster, of which portions were identically copied by the defendant in the advertisement for their product 'Sprite'. The copied commercial went to the extent of copying whereby even the characters wore the identical clothes as compared to those in the 'Pepsi' commercial: *The Famous Cola War (Copyright of Advertisement Phrases and Themes)*, TIFAC BULLETIN, May 2004, www.pfc.org.in/fac/may04.pdf.

[59] Section 14, Indian Copyright Act, 1957.

## Problems with Comparative Advertising

As a direct consequence of the liberalization and globalization of the Indian economy, the Indian consumer is now faced with an onslaught of products and services. Foreign brands are pouring in and their Indian counterparts, both new and old are bidding to gain a foothold in the market leaving the consumer drowning in a sea of choice. In such a scenario comparative advertising gives scope to the consumer to resolve some of the ambiguity and facilitates in the making of more informed choices.

In comparative advertising the underlying assumption is that the consumer is made aware of differences in features/prices/utility etc. between the compared products. However, while aggressively and vigorously promoting their products and services, firms have often disregarded truthfulness and fairness of representation. The United States Federal Trade Commission legalized comparative advertising in 1971 with the intention that increasing the awareness of consumers would allow them to make more well informed choices.[60] Comparative advertising was legalized in India for the same reasons. What needs to be examined is whether the law has succeeded in fulfilling what it set out to do.

Amongst numerous instances, the most illustrative example of contemporary comparative advertisement in India would be the recent Cola War campaigns. These advertisements are subverting the very essence of comparative advertisement and are degenerating it into mere mockery. In their game of one-upmanship the cola companies have reduced themselves to merely puffing up their products and not providing the consumer with any useful information about the product itself. Unfortunately this form of comparative advertising seems to be a growing trend in advertising today.

In the landmark decisions of *Reckitt-Colman of India Ltd. v. Kiwi TTK*[61] and *Reckitt Coleman of India Ltd. v. M.P. Ramachandran*[62] the courts have encouraged this disturbing development by allowing mere puffing up without any basis whatsoever. The focus has only been on the prohibition of disparagement. The attitude of the courts has been such that the promotion of hot air is allowed just so long as a competitor is not denigrated. While focusing on unfair trade practices and the protection of intellectual property rights, the courts seem to have disregarded the consumers' interest. This can be seen in a recent Madras High Court case, wherein Justice Banumathi opined that comparative advertisement at present involved a balancing of interests of advertisers in promoting their products on one hand and the interest of those who might be damaged by competitor's attacks on their products on the other.[63]

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[60] Sukanya Kumar ,Comparative Advertisements:Benefit to ConsumersThe Hindu,Jun.15.

[61] 1996 P.T.C. 193 T 399

[62] 1999 P.T.C. (19) 741.

Considering that a significant portion of intellectual property jurisprudence in India is derived from English law, perhaps the Indian judiciary should take a leaf out of the UK courts. They have applied the law in a manner whereby the regulation of comparative advertising is such that the interest of the consumer is not completely eclipsed.

The landmark case of *O2 Holdings Ltd. and Others v. Hutchison 3G Ltd.*[64] introduced a new defence to trade mark infringement under the Comparative Advertising Directive. The petitioners, a leading provider of mobile telecommunication services in the United Kingdom, had been using imagery including bubbles in its advertisements since 2002 and had spent £320 million on advertising and promotion. The bubble formed a part of the petitioner's identity. The respondents, a rival company that had launched a new service under the name "Three Pay", advertised with a stream of bubbles in black and white and information about O2's prices and services. Even though the Judge accepted the claim by them that the bubbles in the respondent's advertisement was similar to O2's bubble and that it could have caused confusion, the respondents took the defence under the Comparative Advertising Directive; which lays down conditions for acceptable comparative advertising:

1. *Must not be misleading;*
2. *Must compare goods or services meeting the same needs or intended for the same purpose;*
3. *Must objectively compare one or more material, relevant, verifiable and representative features;*
4. *Must not create confusion, discredit or denigrate the competitor or its trademarks;*

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[63] *See Comparative ads Need to be Curtailed: HC*, THE HINDU BUSINESS LINE, Dec. 15, 200 http://www.thehindubusinessline.com/2005/12/15/stories/ 20051215008308 00.htm.

[64] [2006] E.W.H.C. 534 (Ch). 12.

5. *Must not take unfair advantage of the reputation of the competitor's trade mark; and*
6. *Must not present goods or services as imitations or replicas of goods or services of the competitor trade mark owner.*

The Judge held that an advertisement must comply with the Directive in order to avoid trademark infringement. Hence the suit for trademark infringement failed.

As can be seen, unlike the principles adopted by the Indian courts, as per the standards applied in UK, a statement made by an advertisement needs to be verifiable and true thereby not allowing the same amount of puffing up that occurs in the Indian scenario.

An extension to this line of thought brings up a more fundamental question of whether the truth, in any form, disparaging or otherwise, ought or ought not to be suppressed. Stripping it down to the basics, advertising is for the consumers' benefit. Take the instance of the landmark English case of *Cable & Wireless PLC v. British Telecommunications*.[65]The defendants issued an advertisement brochure comparing the prices of its telephone services with those of the plaintiff. The court refused the injunction because the information which the defendant advertised was not false. Similar rulings have been given in numerous English cases[66] , all indicating that as long as the comparison is honest then it should be allowed irrespective of it being disparaging or not. While there have not been too many cases of honest comparative advertising coming before the courts in India, a similar stance such as that of the UK ought to be taken. An early indication of a step in this direction can be found in *Godrej Sara Lee Ltd. v. Reckitt Benckisser*[67] where the court upheld honest comparative advertising despite certain overtones of disparagement.

## Comparative Advertising and Defence of Puffing

Indian courts have traditionally allowed advertisers ample leeway when making "puff" statements (i.e., exaggerated claims) about their products. Even untrue claims about a product are often allowed, with the line being drawn only at disparagement or slander of another producer or its goods.

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[65] 1998 F.S.R. 383

[66] See *British Airways PLC vRyanair Ltd.,* 2001 F.S.R. 32; *O2 Holdings Ltd. &Ors. v. Hutchison 3G Ltd.,* [2006] E.W.H.C. 534 (Ch). 12. [2006] E.W.H.C. 534 (Ch).

[67] 2006 (32) P.T.C. 307.

As a result, puff statements regularly feature in comparative advertising and, over time, the courts have developed a set of principles to assess the legitimacy of such claims[68]

Until it was repealed by the Competition Act 2002, Section 36A(x) of the Monopolies and Restrictive Trade Practices Act 1984 provided a basis upon which a claim could be made against disparagement of goods. Section 36A(x) limited comparative advertising by recognizing that the publishing of any misleading or disparaging facts about a competitor's goods or services amounted to "unfair trade practice".

In addition to the Monopolies and Restrictive Trade Practices Act, the Trademarks Act 1999 (Section 28(9) - notified with effect from September 15, 2003) mandates that the use of a registered trademark by an advertiser results in infringement if it:

- *takes unfair advantage of the mark's reputation;*
- *is contrary to honest practice in industrial or commercial matters;*
- *is detrimental to the mark's distinctive character; or*
- *damages the reputation of the trademark.*

The Constitution of India explicitly protects freedom of speech and expression in Article 19(1)(a), In reference to this article, the Supreme Court of India has held advertisements to be commercial free speech[69]. As with all freedoms under Article 19 commercial free speech is subject to certain reasonable restrictions by Article 19(2) of the Constitution.

Interestingly, the definition of "unfair trade practice" used by the now repealed Monopolies and Restrictive Trade Practices Act is found with a substantially similar meaning in the Consumer Protection Act 1986. This Act protects two key rights, namely:

- the *right of the consumer to be informed about the quantity, potency, purity, standards and price of goods to guard against unfair trade practices; and*
- *the right to consumer education.*

In *Colgate-Palmolive (India) Limited v Anchor Health & Beauty Care Private Limited*[70],a judge at the High Court of Madras held that false claims by traders about the superiority of their products, either directly or by comparing them against the products of their rivals, were not permissible. This is a significant departure from the traditional approach to commercial puffery (where there is no disparagement).In this case, an advertisement was telecast by the defendant, Anchor, claiming that:

- *its product was the only toothpaste containing the ingredients calcium, fluoride and*

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[68] The principles, as stated in *Reckitt & Coleman of India Ltd v Kiwi TTK Ltd* (63 (1996) DLT 29)

[69] *Tata Press Ltd v Mahanagar Telephone Nigam Ltd* (1995 (5) SCC 139))

[70] Case (2008) 7 MLJ 1119

*triclosan;*

- *it was the first all-round protection toothpaste;*
- *the fluoride in Anchor toothpaste gave 30% more cavity protection; and*
- *thetriclosan contained in Anchor toothpaste was 10 times more effective in reducing bacteria.*

The plaintiff, Colgate, objected to these claims, stating that it was the pioneer in the field and that its own toothpaste contained the three ingredients prior to Anchor. Colgate claimed that Anchor's statement with regard to fluoride protection, and the efficiency of triclosan, was false and misleading as the amount of fluoride in toothpaste is mandated by Rule 149-Aof the Drugs and Cosmetics Rules. Colgate claimed that:

> *A false statement which stops at being a mere puffery may be within the tolerance limits permitted by law. A claim which exceeds the said limit would amount to disparagement of the other people's product and that, therefore, the same cannot be allowed to continue".*

In its interim order, the court restrained Anchor: "from using the words "only" and first in the offending advertisement, in a manner sending a message as though the respondents product is either the only one containing all three ingredients, or the first to provide all-round protection. "The court asserted that consumer interest is an element which must be considered when assessing comparative advertising. This appears to be the first time a court has included discussion of consumer interest in its analysis of such advertising. At first glance, the decision appears to be inconsistent with earlier case law on this issue. However, as no other rulings have referred to the interests of consumers, the Colgate Case is not in direct contradiction to prior decisions -although the High Court of Madras failed to notice a recent order of the Delhi High Court in *Reckitt Benckiser v Hindustan Lever*[71] which held that mere "generic" puffery is not actionable.

The Madras High Court observed that:

> *"Recognizing the right of producers to puff* (face own *products even with untrue claims, but without denigrating or slandering each other's products, would be to 'de-recognize' the rights of the consumers guaranteed under the Consumer Protection Act 1986."*

The court also held that:

> *"To permit two rival traders to indulge in puffery, without denigrating each other's products, would benefit both of them, but would leave the consumer*

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[71] Case 2008 (38) PTC 139(Del).

*helpless. If on the other hand, the falsity of the claim of a trader about the quality and utility value of his product is exposed by his rival, the consumer stands to benefit by the knowledge derived out of such exposure. After all, in a free market economy, the products will find their place, as water would find its level, provided the consumers are well informed. Consumer education, in a country with limited resources and a low literacy level, is possible only by allowing a free play for the trade rivals in the advertising arena, so that each exposes the other and the consumer their by derives a fringe benefit. Therefore, it is only on the touchstone of public interest that such advertisements are to be tested."*

Based on these findings, the court crafted the following principles:

- *Publication of advertisements as free commercial speech is protected by Article 19(1)(a) of the Constitution;*
- *Restrictions contained in statutes such as the Monopolies arid Restrictive Trade Practices Act and the Consumer Protection Act satisfy the test of reasonable restrictions allowed by Article 19(2) of the Constitution;*
- *If a case of disparaging advertising falls within the definition of the term "unfair trade practice", an action may be brought before a consumer court or a civil court by a consumer, a group of consumers, a consumer association, the central or state governments, a manufacturer or marketer where the advertising contains a false representation as per Section 2(1)(r) of the Consumer Protection Act;*
- *Section 2(1)(r) of the Consumer Protection Act categorizes four types of representation as actionable "unfair trade practices", namely:*
    - a. *false representations falling under sub clauses (i), (ii) and (iii);*
    - b. *representations which may not necessarily be false but are nevertheless incorrect under sub clauses (iv) and (v);*
    - c. *warranty or guarantee under sub-clauses (vii) and (viii); and*
    - d. *false or misleading representations that fall under sub clauses (vi), (ix) and (x).*

The court, observing the statutory basis of unfair trade practices, noted that:

*"It is doubtful if false claims by traders, about the superiority of their products either simpliciter or in comparison with the products of their rivals, is permissible in law. In other words, the law as it stands today, does not appear to tolerate puffery anymore."*

Notably, the court found to be permissible advertisements which:

*"tend to enlighten the consumer, either by exposing the falsity or misleading nature of the claim made by the trade rival or by presenting a comparison of the merits (or demerits) of their respective products."*

Interpreting such advertisements to be in the "public good", the court cited two instances as an exception to this - namely, if an advertisement is motivated by malice, and if it is false. The court held that this sort of advertising would benefit society because competitors are naturally better equipped to expose a rival's untrue claims. The court also held that the benefit to society from such an exposure would "outweigh the loss of business for the person affected". This observation was based on the court's assumption that comparative advertising, even if it did not amount to a disparagement of other goods, could result in consumers being misled.

The court held that it was ultimately to the benefit of consumers to allow truthful "exposures" and to restrain traders from making:

*"False representations, incorrect representations, misleading representations or issuing unintended warranties (as defined as 'unfair trade practice' under the Consumer Protection Act)."*

This balancing of trader interests with consumer interests means that an advertisement which makes false claims, whether comparative or not, may be subject to an injunction or restraining orders from a court. While the Madras High Court Judgment is theoretically binding on concurrent Courts in Madras and on lower Courts within its jurisdiction, judges who disagree with the finding in a case have the option to offer a new opinion or refer the matter to the Division Bench for definitive interpretation. This judgment is expected to be influential among High Courts in other jurisdictions. However, it is likely that the law in this area will witness some inconsistency until the Supreme Court makes a definitive ruling.

## Conclusion

From the above research, it can be concluded that the Indian law, although interpreted to allow comparative advertisement, does not address the issue in a direct or comprehensive manner in any legislation.

TM Act and MRTP Act have to be read together to understand the concept of Comparative Advertising. In view of the policy shift from curbing monopolies to promoting competition, the Union Cabinet on June 26, 2001 approved the repeal of the Monopolies and Restrictive Trade Practices Act. Hence, the Competition Law which aims at doing away with the rigidly structured MRTP Act is tipped to come into force by mid-2008, and all cases pertaining to unfair trade practices referred to in clause (x) of sub-section (1) of section 36A of the MRTP Act, and pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India shall dispose of such cases as if they were cases filed under that Act.

It must also be noted that several important terms related to the concept of comparative advertising such as "disparagement" and "honest practices" are not defined in any legislation, and the dictionary meaning or judicial interpretations have to be used in ascertaining the meaning of these terms. 'Unfair trade practice' has been defined u/s 36A of Monopolies and Restrictive Trade Practices, 1969 that stands repealed now. Another statute, Consumer Protection Act, 1986 provides protection against unfair trade practice but in the cases of 'comparative advertising' the parties are firms (whose products are endorsed by the advertisements), which would not come in the ambit of 'consumers' to approach the consumer forum.

Precedents like the one laid down in *Dabur India Ltd.v. Emami Ltd*[72] could severely curtail the scope of comparative advertising. Jurisprudentially speaking, the concept of defamation has to be specific or individualized in nature.[73] In the present case, the courts seem to have overlooked this premise, as the court's ruling in the case laid down that even a reference to a generic class of products could be potentially disparaging. This could be viewed as dangerous precedent as it would disallow a competitor to even make comparisons on a general basis. Hypothetically if the newly launched Tata Nano were to put out an advertisement giving out the impression that bike owners could 'progress' in life by graduating to a car, then based on the ratio of this case, any bike company would be able to successfully sue Tata for disparagement.

Perhaps the position of the courts has been relaxed with the decision in the case of *Dabur India Ltd. v. Wipro Ltd., Bangalore*.[74] In this case, the court added a new dimension to the existing test for disparagement by laying down that the degree of disparagement must be tantamount to, or almost tantamount to defamation. The judgment further went on to say that a manufacturer of a product ought not to be hyper-sensitive in such matters. It is necessary to remember that market forces are far stronger than the best advertisements. If a product is good and can stand up to be counted, adverse advertising may temporarily damage its market acceptability, but certainly not in the long run.[75]

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[72] *See Dabur-Emami,* 2004 (29) P.T.C. 1

[73] *See* RATANLAL & DHIRAJLAL, THE LAW OF TORTS 259-261 (G.P. Singh ed., Wadhwa& Co. 2004).

[74] *See Dabur-Wipro,* 2006 (32) P.T.C. 677.

By liberally allowing puffing up in marketing strategies, so long as a competitor is not adversely affected, the courts have turned a blind eye towards the equally important consumer and his interests. The manner in which competitive advertising is panning out in the Indian sphere, the focus only seems directed towards the grabbing of eyeballs, without providing any productive information for the consumer to utilize. The objective behind comparative advertising was not only being informative and an important tool to promote competition but for comparisons to serve as benchmarks to help consumers focus on the product's main qualities.[76] In India, the courts have been oblivious to these aspects. Even on the stand of honest comparative advertising, the Indian position remains ambiguous and unsteady. While there is international consensus on the fact that any form of comparative advertising, whether disparaging or not, is permissible so long as it is based on facts and is verifiable, it is unclear whether the position is the same in India. It is true that most cases that have come before the courts depict instances of disparagement in an unequivocal manner but decisions like the one given in *Dabur India Ltd. v. Emami Limited*[77] sow seeds of doubt with regard to the Indian position.

Having said that, the latest set of judgments to emerge from the Indian courts seem to be taking comparative advertising in the direction of restoring some parity with the international position. Decisions like those made in the cases of *Dabur India Ltd.v. Wipro Limited, Bangalore*[78] and *Godrej Sara Lee Ltd. v. Reckitt Benckiser (I) Ltd.*[79] are in conformity with the position of law in the UK and USA.The burden of ensuring healthy competition however does not merely lie with the courts. It is of equal importance that the marketers of products engage in comparative advertising engage in the activity within the permissible parameters of the law. Establishing a brand marketing policy within a company ought to be as important as watching for use and misuse of a brand by other competitors. It is important to keep the following guidelines in mind while engaging in the activity:[80]

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[75] *See* Panjrath and Singh, *supra* note 53, at A-209.

[76] *See* Keshav S. Dhadak and Vaishali Mittal, *India: How to Gain From Comparative Advertising,* http:/ /www.managingip.com/Article.aspx?ArticleID=1321496.

[77] *See Dabur-Emami,* 2004 (29) P.T.C. 1.

[78] *See Dabur-Wipro,* 2006 (32) P.T.C. 677.

[79] *See Godrej Sara Lee Ltd vReckitt Benckisser* ,2006 (32) P.T.C. 307.

1. *A comparison should be made based on verifiable facts about the advertisers' and the competitors' products/services, which can be substantiated.*
2. *Results or differences should not be shown in the advertisements because consumers may draw improper conclusions from them. Always accurately depict the competitor's mark with appropriate trade*
3. *Mark symbols/notices and adds a footnote identifying the correct owner and disclaiming any affiliation. A competitor's mark should not be altered in any form.*
4. *Avoid using a rival mark in a highlighted or prominent fashion that implies an affiliation with or sponsorship by the competitor of your advertisement.*
5. *Keep the primary goal of your advertisement limited to inform the consumer and not to unfairly attack, criticize, or discredit other products, advertisers or advertisements directly or by implication.*
6. *The product or services being compared should reflect their value and usefulness to the consumer. The comparative advertisement should be informative and convey positive merits of the product/service.*
7. *The advertisement should not make unjustifiable use of any firm, company or institution and should not take unfair advantage of the goodwill of any trade name or symbol of another firm.*
8. *Puffery should be made actionable in comparative advertising.*
9. *Misleading and false comparative advertising should be actionable per se so that the consumers who are ultimate victims can approach consumer forums.*
10. *In India, the Advertising Standards Council (ASCI)*81 *provides that the advertisements containing comparisons are permissible in the interest of vigorous competition and public enlightenment provided:*
    a. *it is clear what aspects of the advertisers product are being compared with what aspects of the competitors product;*
    b. *the comparisons are factual, accurate and capable of substantiation;*
    c. *there is no likelihood of the consumer being misled as a result of comparison, whether about the product advertised or that with which it is compared;*

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[80] *See Dha*dak and Mittal, *supra* note 76.

[81] Chapter IV.

d. *the advertisement should not unfairly denigrate attract or discredit other products, advertisers or advertisements directly or by implication;*

e. *the subject matter is not chosen in such a way as to confer an artificial advantage upon the advertiser or so as to suggest that a better bargain is offered than is truly the case..*

11. *Comparative advertisement will be banned if the advertisement is not telling the truth of the other. The electronic media can play a role of major platform for many more comparative advertisements which will pave way for the growth of stronger advertisement laws because the changing globalization and commercialization needs a strong regulations and institutions to regulate comparative advertising.*
12. *From time to time the rules and regulations must be amended as the Indian government did after the recommendations of the Commission set by it to know the latest changes in unfair trade practices.*
13. *The existing laws in India are strong and the only need is that the balance should be maintained to protect the economy, if an investor has invested a huge amount of money in a business and advertises his product revealing the truth of the other competitor then he should be allowed to proceed with his advertisement. Only opening ways for strong economy will not fulfill the need. The appropriate law, adequate enforcement, strong infrastructure, and a quick dispute settlement mechanism would be needed to sustain competition. .*
14. *Fair use doctrine as applied in US should also be applied in India in order to allow persons to use the advertisement without any intention to harm the original and not to mislead the consumers.*

The above guidelines do not have force of law. It is suggested that these guidelines be incorporated in CP Act so as to enable the redress agencies to assess objectively the trade practice in question. If guidelines along these lines are followed by the product marketers, it allows for the fostering of a better corporate environment to invest in. It is of utmost importance for both companies and the judiciary to work in tandem to restore the parity in comparative advertising whereby fair trade practices; intellectual property protection and consumer interest can go hand in hand.

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# INSIGHT INTO THE ANTAGONISM BETWEEN TERRORISM AND TOURISM IN INDIA: AN EMPIRICAL STUDY

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## ABSTRACT

*Terrorism is a bane for tourism industry. The incidents of terrorism have reduced the people's propensity to travel, since safety has become a major concern for them. Peace and political stability which are considered as the pre-requisites for tourism have been disrupted by terrorism. We all have witnessed how the tourism industry is in the state of flux in Jammu and Kashmir, which is one of the most preferred destinations for many. This paper seeks to understand the antithetical relationship between terrorism and tourism in India. An in-depth review of the existing literature on tourism and terrorism has been undertaken to understand the antagonistic relationship between the two. The data have been collected from secondary sources and appropriate statistical tools have been used to draw inferences. Attempt has been made to identify specific issues relating to terrorism and tourism in West Bengal. Finally the authors have tried to propose means to protect the tourism sector from the pangs of terrorism.*

***Key Words***: tourism, terrorism, India, West Bengal

## Introduction

Terrorism is a bane for tourism industry. Tourism, which is an important economic sector in several countries, has been referred to by many as a "fragile" industry, since it is extremely vulnerable to retardants such as wars, political instability, outbreaks of contagious diseases, incidents of terrorism, economic fluctuations, currency instability, and so on (Bonham et al, 2006). The incidents of terrorism have reduced the people's propensity to travel, since safety has become a major concern for them. In India, the

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tourism industry is a great source of revenue and has a substantial contribution to th GDP. Peace and political stability which are considered as the pre-requisites for touris have been disrupted by terrorism (Alsarayreh, 2010) in India. We all have witnesse how the tourism industry in Jammu and Kashmir was in the state of flux due to the fea of terrorism. Research studies have established that the developing countries are mor susceptible to terrorism and are more adversely affected by it than the develope nations. So, it is essential to understand the terrorism-tourism relationship in the India context. This study is an endeavour in this perspective.

## Objectives of the Study

This paper seeks to understand the antithetical relationship between terroris and tourism in India. Literature has established that terrorism adversely affects th economic development of a nation. But in this study we have tried to understand th relationship between terrorism and tourism on the basis of the FTAs. This study als intends to understand the relationship between terrorism in India and foreign touri arrivals from the two selected countries-USA and UK. Attempt has been made t identify specific issues relating to terrorism and tourism in West Bengal. Finally, th authors have tried to propose means to protect the tourism sector from the pangs o terrorism.

## Methodology of the Study

An in-depth review of the existing literature on tourism and terrorism has bee undertaken to understand the relationship between terrorism and tourism. Th empirical and research based articles on tourism and terrorism have been obtaine from several databases including, Academic Search Premier, JSTOR and Business Sour Premier. Resources for this study have also been obtained from the websites o different bodies engaged in the promotion of tourism. To understand the relationsh between terrorism and tourism in India, we have collected data on the major terror attacks (TAs) in India and the foreign tourist arrivals (FTAs) in India during the peri 2001 to 2010. Data have been also collated regarding the FTAs from the United Stat and the United Kingdom. The rationale behind the selection of these two countries-US and UK, is based on the fact that major portion of the foreign tourists hail from the two nations. The percentage share for the foreign tourist arrivals in India in 2010 w 16.40 percent for USA and 13.52 percent for UK. The data on FTAs have been compil mainly from the annual reports, India Tourism Statistics, prepared by the Ministry Tourism, India. The data on TAs have been assembled from the 'list of terror incidents, 2000-2010' (www.wikipedia.com) and South Asia Terrorism Portal database. Appropriate statistical tools have been used to draw inferences from the data collated for the study. To examine the relationship between terrorism and tourism we have computed correlation coefficient and *t* test has been applied for testing its statistical significance.

## Antithetical Relationship between Terrorism and Tourism: Review of Literature

In this section, the authors intend to review the literature on terrorism and tourism to understand their relationship. Based on the literature the authors have proposed Terrorism–Tourism Concomitant Model, which reflects the impact of terrorism on tourism and how the menace of terrorism should be dealt with.

There is a fast growing literature appraising the effects of terrorism on tourism. Enders and Sandler (1991) studied the relationship between international terrorism and tourism in Spain, and it revealed that a terrorist attack decreases the number of visitors to Spain. In another study, an attempt was made by the researchers to quantify the present value of loss in tourism revenues for the selected European countries and they estimated that the aggregate losses in revenue for Austria, Greece and Italy amounted to $4.467 billion (Enders et al., 1992).

Pizam and Fleisher (2002) examined whether the magnitude or frequency of terrorist incidents have a more detrimental effect on tourism in Israel. They obtained that more frequent incidents have a more lasting effect which can ultimately lead to a collapse of tourism. Sloboda (2003) carried out a study to analyze annual time series of the number of terror attacks on US interests and US tourism receipts during the period 1988-2001. In the year 2005, Ito and Lee conducted a study to assess the impact of the September 11 attacks and the imposition of stringent new security requirements on domestic airline demand in the USA, and they concluded that the terror attacks and security measures account for roughly 94 percent of the decline in revenue passenger miles from the historical peak.

In the recent years the tourists have become a common target of terrorist activities. The host countries providing tourism services are adversely affected by terrorist attacks, since the people are substituting them with other safer destinations for their holidays. Researchers have mentioned that the effect of terrorism on tourists in a specific country may benefit the tourism industries in substitute/alternative destinations. Drakos and Kutan (2003) investigated the effect of terrorism in Greece, Israel and Turkey on each other's market share, with Italy serving as a control country, representing the rest of the Mediterranean region. Their findings indicated that there are significant substitution effects, and there is also empirical evidence for the contagion effect. Through several research studies, the 'contagion' and 'substitution' effects have been empirically established for the tourism industry. However the substitution effect is not so high in case of large and diverse countries like India. Bonham et al (2006) reviewed the trend in travel and tourism in the US and Hawaii to ascertain how terrorist attacks of 9/11 have affected the tourism flows. It has been observed that tourism in the US has not recovered from 9/11 and other international shocks, whereas Hawaii tourism is enjoying a robust growth in the after math of 9/11 which is somewhat explained by the diversion of US travel from foreign travel.

Blomberg et al (2004) made an attempt to measure the economic consequences of terrorism. They found that the incidence of terrorism is negatively and significantly related to GDP growth. Crain and Crain (2006) in their research work estimated the macroeconomic consequences of terrorism using panel data for 147 countries for the period 1968-2002. They presented the estimates of the impact of terrorism on GDP, GDP growth, investment, consumer spending, and tourism.

Another important work by Frey, Luechinger, and Stutzer (2007) pointed out that terrorism can affect economic activity in four different ways—first, terrorist attacks derogate a country's capital stock, both human and physical capital; second, terrorist campaigns divert foreign resources away from the affected countries to other destinations; third, terrorism induces a higher level of uncertainty and, thus, distorts the resource allocation within a country through changes in individuals' savings, investment and consumption behaviour; and fourth, heightened security measures increase transaction costs and draw away resources from more productive use. Furthermore terrorist attacks evoke a climate of fear that reduces people's well-being beyond the immediate economic consequences (Frey et al, 2007, pp.2).

Karagoz (2008) investigated the effects of terrorism and other factors on Turkey's tourism sector. It was observed that in case of Turkey, there are two separate periods of terrorism which have a negative effect on tourist arrivals, and these effects are transitory in nature. Araña and León (2008) carried out a study to assess the impacts of the September 11 attacks in New York on tourist preferences for competing destinations in the Mediterranean and the Canary Islands. It was observed that while some destinations experienced a strongly negative impact on their image and attractiveness, others were upgraded as a consequence of terror events.

According to Thompson (2008), despite the damage terrorism can have on tourism, the extent to which countries are affected by terrorism attacks depend largely on the strength of its economy. His study clearly shows that the developed nations' tourism is much less affected by terrorism than developing countries' tourism. The stud conducted by Alsarayreh et al (2010) revealed the connection between tourism and politics and overviewed the negative impact of politics on tourism activities. Ahmed et al (2011) pointed out in their study that tourism, which is one of the valuable sources of earning for people in northern parts of Pakistan has suffered a lot especially in 2007-09 because of terrorist acts and war on terrorism in the northern parts of the country (http://cppr.edu.pk).

On the basis of the review of the literature, we can say that there is an antithetical relationship between terrorism and tourism. But the impact of terrorism on tourism depends on several factors like the structure of the tourism industry, the strength of the economy, the nature of the place of attack, the nature of the terrorist attacks, the terrorist groups, the fatalities or injuries caused, the cultural dimensions of the place of occurrence, the nationality of the persons killed or injured, and so on.

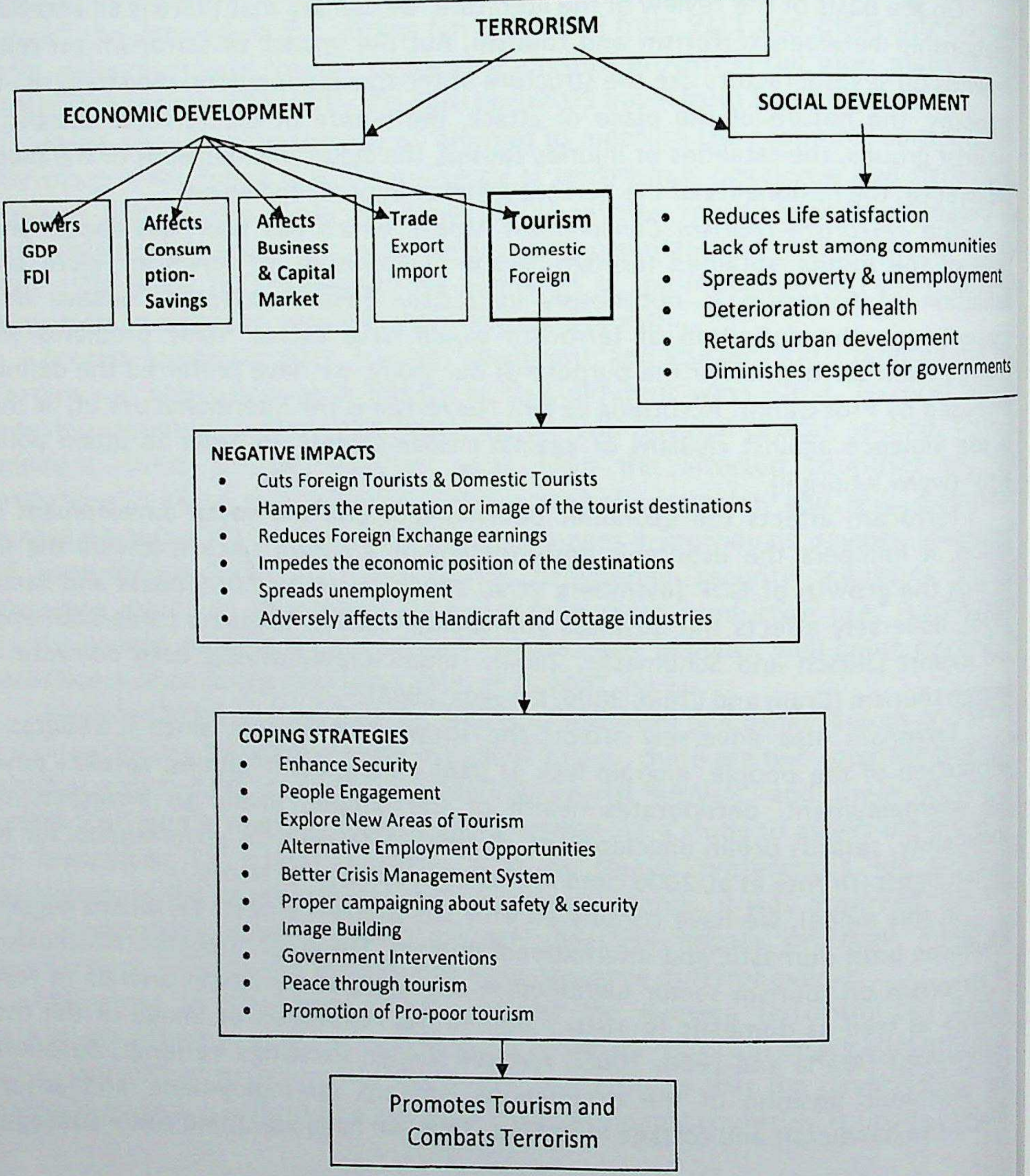
The *Terrorism-Tourism Concomitant Model*, which has been developed on the basis of the inputs obtained through review of literature, is shown in Figure 1. The definition of terrorism is notoriously imprecise. Political scientists believe that a consensus in the definition of terrorism would have solved many problems which emerge from terrorism. For the purpose of our study, we have preferred the definition proposed by Prof Ganor. According to him "terrorism is the intentional use of, or threat to use violence against civilians or against civilian targets, in order to attain political aims" (www.ict.org.il).

Terrorism affects the economic development and the social development of a nation. It hampers the economic development of a nation since it lowers the GDP, retards the growth of GDP (Blomberg et al, 2004), obstructs FDI (Enders and Sandler, 1996), adversely affects the business and capital market, hampers trade-both import and export (Nitsch and Schumachr, 2004), unfavourably affects both domestic and foreign tourism (Crain and Crain, 2006, Karagoz, 2008).

Terrorism also adversely affects the social development since it reduces life satisfaction of the people, engrain lack of trust among communities, spreads poverty and unemployment, deteriorates health of the people, instils an environment of uncertainty, retards urban development, diminishes respect for governments for basic human rights (Dreher et al, 2006 cited in Fret et al, 2007), and so on.

In this model, we have considered only the tourism aspect. Terrorism negatively influences both domestic and international tourism. The major negative consequences of terrorism on tourism sector identified in this study are—cuts in arrivals of foreign tourists as well as domestic tourists, hampers the reputation or image of the tourist destinations (Araña and León, 2008), reduces foreign exchange earnings, deteriorates the economic position of the destinations, spreads unemployment, and adversely affects the handicraft and cottage industries. Then we have identified some strategies to cope up with terrorism. Designing and implementation of proper coping up strategies is imperative to promote tourism and combat terrorism. The strategies have been discussed in another section.

Figure 1: Terrorism-Tourism Concomitant Model


TERRORISM
ECONOMIC DEVELOPMENT
SOCIAL DEVELOPMENT
Lowers GDP FDI
Affects Consumption-Savings
Affects Business & Capital Market
Trade Export Import
Tourism Domestic Foreign
Reduces Life satisfaction
Lack of trust among communities
Spreads poverty & unemployment
Deterioration of health
Retards urban development
Diminishes respect for governments
NEGATIVE IMPACTS
Cuts Foreign Tourists & Domestic Tourists
Hampers the reputation or image of the tourist destinations
Reduces Foreign Exchange earnings
Impedes the economic position of the destinations
Spreads unemployment
Adversely affects the Handicraft and Cottage industries
COPING STRATEGIES
Enhance Security
People Engagement
Explore New Areas of Tourism
Alternative Employment Opportunities
Better Crisis Management System
Proper campaigning about safety & security
Image Building
Government Interventions
Peace through tourism
Promotion of Pro-poor tourism
Promotes Tourism and Combats Terrorism

## Understanding the Terrorism-Tourism Relationship in the Indian Context

According to the extant literature, terrorism reduces the number of tourist arrivals during the period of occurrence. Data have been collected on FTAs in India during the period 1998-2010, and the percentage change in FTAs has been computed. These data have been presented in Table 1. It has been diagrammatically presented (Figure 2 and Figure 3) to determine the period of breaks in the FTAs in India. In determining the period of breaks, we have matched visual inspection of breaks together with external information regarding the terrorist activities (Karagoz, 2008).

The numbers in Table 1 depicts that in the years 2001 and 2002, there has been a sudden decline in the FTAs in India. This fact can obviously be attributed to the 9/11 attack in New York and Washington DC. Since the American nationals constitute the major percentage share of the foreign tourist arrivals in India, total FTAs during that period was adversely affected. Another point, which can be highlighted in this context, is that during the year 2000 India witnessed 21 major terrorist attacks in various part of the country with four incidents at Delhi. The Parliament attack on 13th December 2001, in which 11 people were killed and 30 injured (South Asia Terrorism Portal) needs to be mentioned in this milieu. The authors feel that all these factors had a multiplier effect on the foreign tourist arrivals during the period 2000-2001.

Again a sudden decline in FTAs was observed from the year 2008 onwards. The major reason for the decline in the number of FTAs in India since 2008 is the global financial crisis. In this context the authors would like to point out that one of main cause behind the crisis is the 'war against terror'. According to the HSRC, $2.4 trillion has been expended for the war. After ten years into the war on terror, the U.S. government has incurred huge cost, and this war has profoundly damaged the U.S. economy (Blimes and Stiglitz, 2011). The wars have contributed to America's macroeconomic weaknesses, which aggravated its deficits and debt burden (Stiglitz, 2011). So, we can conclude that terrorism has pushed the US economy into the crisis to a great extent. Another terrorist incident that has quivered the tourism industry, especially the FTAs in India, took place on 26/11 in the year 2008. There was multiple terrorist attacks across the Mumbai city which killed 166 people and injured more than 300 people (South Asia Terrorism Portal).

Table1- FTAs during the period 1998-2010

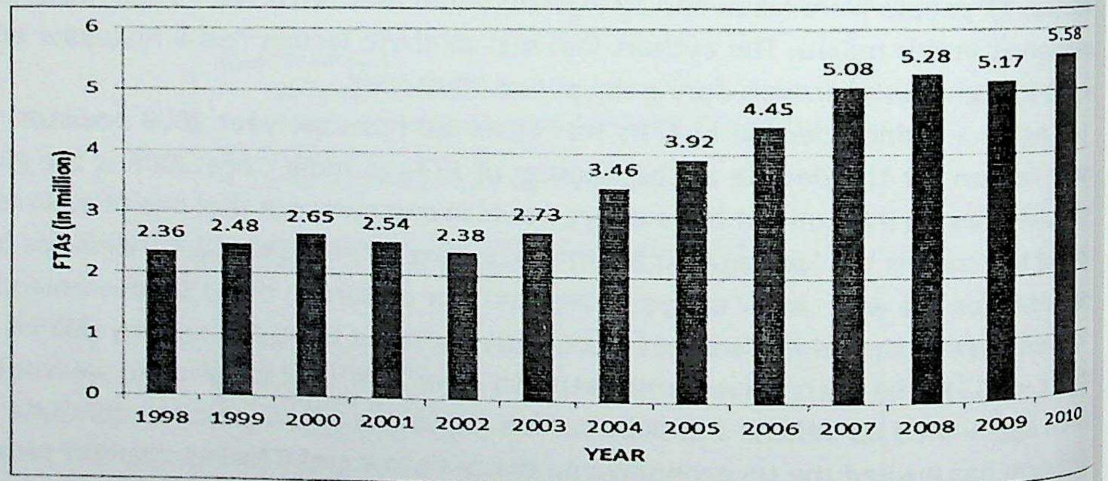
| Year | FTAs (in million) | Percentage Change (%) |
|---|---|---|
| 1998 | 2.36 | - |
| 1999 | 2.48 | 5.084746 |

| | | |
|---|---|---|
| 2000 | 2.65 | 6.854839 |
| 2001 | 2.54 | -4.15094 |
| 2002 | 2.38 | -6.29921 |
| 2003 | 2.73 | 14.70588 |
| 2004 | 3.46 | 26.73993 |
| 2005 | 3.92 | 13.2948 |
| 2006 | 4.45 | 13.52041 |
| 2007 | 5.08 | 14.1573 |
| 2008 | 5.28 | 3.937008 |
| 2009 | 5.17 | -2.08333 |
| 2010 | 5.58 | 7.930368 |

Source:Adapted from India Tourism Statistics, Ministry of Tourism, Govt. of India, 2003-10

The data of Table 1 has been depicted in Figure 2.

Figure2: Foreign Tourist Arrivals (FTAs) in India during the period 1998-2010



Source: Complied from India Tourism Statistics, Ministry of Tourism,Govt. of India,2003-10

On the given data set on FTAs in India during the period 1998 to 2010, we have fitted quadratic trendline ($R^2$= 0.9351), which is shown in figure 3. It can be observed from the figure that there has been a decline in the FTAs in India from the year 2000 and it has regained the expected trend from the year 2004 onwards. Again a sudden decline in FTAs can be observed from the year 2008 onwards. The actual FTAs in India since 2008 is lower than the expected FTAs.

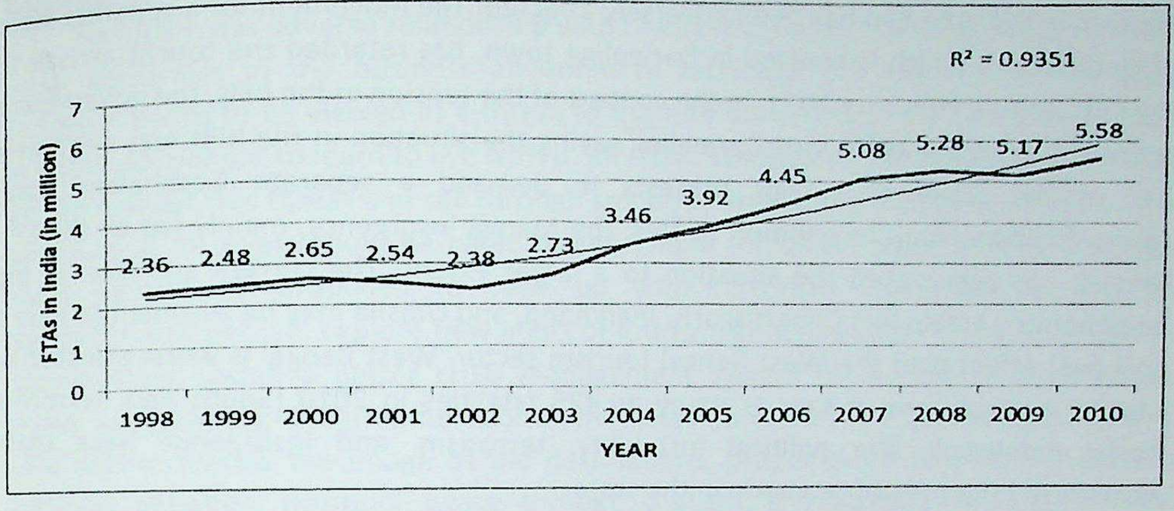


Figure 3: Foreign Tourist Arrivals (FTAs) in India during the period 1998-2010

To understand the relationship between terrorism and tourism in India, we have collected month wise data on the major terrorist attacks (TAs) in India and the foreign tourist arrivals (FTAs) in India during the period 2001 to 2010. We have computed the correlation between the major terrorist attacks and the FTAs in India and for this month wise data have been used. The computed correlation value between TAs and FTAs is 0.083, but it is statically insignificant. This implies that there is no relationship between terrorism and FTAs in India. Since India is a large country and which is quite diverse, the impact of TAs on FTAs in India may have been neutralised to a great extent. Another interpretation for this low correlation may be that the large population may have reduced the negative impact of terrorism on tourism (Neumayer, 2004, pp. 271).

Since the majority of the foreign tourists in India are from the United States and the United Kingdom, we have computed correlation between the number of FTs from these nations and the number of TAs in India. A weak negative correlation (-0.0047) has been obtained between FTAs from USA and the number of TAs in India. This finding seems to be quite obvious since the American nationals are more traumatised with terrorism than the nationals from other countries.

## Terrorism-Tourism Aspects: Micro Perspective from West Bengal

West Bengal with its rich history, ethnicity, culture and assorted landscape has emerged as a preferred tourist destination for many. Darjeeling is considered to one of the main tourist attractions in West Bengal. In recent past, we have seen how political instability, violence and insurgence have disrupted the normal life in West Bengal.

Tourism in West Bengal has been adversely affected. The movement for a separate state of Gorkhaland, which is centred in Darjeeling town, has retarded the tourist arrivals in the hills. During February 2011, in the context of the tension in the hills, the government asked the tourists not to visit Darjeeling saying the situation in the hills was extremely bad in the wake of violent protests to demand a separate Gorkhaland state (www.dnaindia.com). In addition to this, the Maoist insurgency, mainly led by the CPI-Maoist, has aggravated the situation to a larger extent. The current situation of the neighbouring states like Chhattisgarh, Jharkhand, and Odisha may be assumed to have a spill over effect over the West Bengal tourism sector. West Bengal is worst affected by Maoist violence, and it saw as many as 425 fatalities in 2010 (South Asia Terrorism Portal database). The political instability, terrorism, and insurgence have really jeopardized the tourism scenario in the state.

Gorkhaland Territorial Administration (GTA) which is an autonomous body to look after the administration of the Darjeeling District in the state of West Bengal, India, was provided greater autonomy by the present TMC Government in India. A tripartite accord was signed between the Centre, the state government and the Gorkha Janmukti Morcha (GJM). The chief minister also remarked that Darjeeling's economy is greatly dependent on tourism and a master plan for tourism development is under preparation which will come off shortly. These initiatives by the present chief minister of West Bengal have improved the situation in the hills. We have also observed that after this the influx of tourists in the hills has increased. The state government's strong retaliatory actions aimed at eradication of insurgence/terrorism activities have facilitated towards the establishment of peace and stability in the state. The death of the top Maoist military commander in November 2011 is considered to be a severe blow to the Maoist movement in the state. These actions have direct bearing on the tourism sector in the state, as evident from the increasing number of tourist arrivals in the state, mainly during the festive seasons. After incidents like this, the people of West Bengal strongly feel that their lives are going to regain normalcy soon.

During this period of disturbance, which is still there, the tourists, especially the domestic tourists have explored the unexplored destinations. The disturbance in the hills has mobilised the tourists to the Dooars in huge number. People have explored not so-popular destinations. Since the state is focusing on eco-tourism, new places are now being identified for promoting tourism in the state. It needs to be mentioned that the craze of the tourists for Darjeeling has been re-established after the successfu intervention by the state government.

## Coping up with Terrorism – Proposed Strategies

Terrorism has adverse relationship with the development of the economy. It is the major constraint in the business environment retarding the progress of a nation. Terrorism needs to be viewed as a threat to the tourism industry, which is very difficult to erode. So, we got to learn to live with it. Effective strategies need to be design so that we can combat this threat and sail through smoothly amidst the problems created by it. Initiatives at all level should be taken to checkmate terrorism. Some of the strategies which have been proposed to cope up with terrorism are—enhance security, engagement of people, explore new areas of tourism, generate alternative employment opportunities, install a better crisis management system in the country, undertake proper campaigning programmes about the safety and security of the destinations, initiatives to rebuild the image of the destinations, proper government interventions needs to designed, promote peace through tourism, and adopt Pro-poor tourism approach for promoting tourism.

Through better security system we can reduce the harmful effects of terrorism, but with this it is very difficult to sustain in the long run. Enhancement of the security system will increase the government expenditure. Here comes the issue of engaging people in the process of reducing terrorism and promoting tourism. The people factor can play a very vital role in this regard. One of the root causes of terrorism is the deprivation and oppression of the people. More and more people should be engaged in the development process and we should create more employment opportunities and ensure that they don't get alienated on the basis of factors like religion, language, caste, ethnicity, and so on. We need to explore new areas of tourism to safeguard the tourists from the twinges of terrorism. Alternative employment opportunities need to be created for the people in the terrorism infected tourist destinations, else the problem in those destinations will be aggravated and cause more social problems. The crisis management system in India is very poor and this is strengthening the antithetical relationship between terrorism and tourism. The crisis management system needs to be improved. The government as well as the private players in the tourism sector must undertake proper campaigning programmes propagating information about the safety and security of the destinations. Proper government interventions may be designed to protect the tourist sites since they are more prone to terrorist attacks. In this regard, proper laws may be framed and strongly implemented so that the sites are protected as well as the people working there. Tourists are sensitive to the negative image of a tourist destination, so efforts should be taken at all levels to rebuild the image of the destinations. Initiatives should be taken by the government to promote 'peace through tourism'. And lastly, we have talked about the pro-poor tourism approach, which should be adopted for the improvement of the backward and poor classes of the society and development of the local economy. For a country like India, this approach has immense relevance. All these approaches will definitely help in the development of the tourism sector and reduce terrorism to some extent. The list of strategies proposed in this paper is definitely inclusive and not exhaustive.

## Conclusion

Terrorism is a major menace that we are dealing with in this century, and it is very difficult to eradicate. Every incidence of terrorism, insurgence or violence is scaring out tourists. Tourism is an important economic sector in India. It has huge potentiality to develop the nation, since it is a high employment and income generating sector. Hence, it is imperative to protect this sector from the pangs of terrorism. A people-oriented approach needs to be adopted to reduce the antithetical relationship between terrorism and tourism. Proper initiatives at all levels should be taken so that people can be resilient and undo the harms inflicted through terrorism.

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# MEASURING THE SATISFACTION LEVEL OF TOURISTS IN THE STATE OF HIMACHAL PRADESH AND PUNJAB

Pooja Malhotra*

## Introduction

Tourism industry in recent times has become one of the fast growing industries world over. This smokeless industry has attracted the attentions of the nations because of the economic and social advantages. It involves movement of millions of people. Many of the countries are seeking to develop tourism for their benefits (**Kumar (1998).** Tourism today is considered the fastest growing component of the global trade. It is an effective instrument of economic development by creating employment opportunities generating income and earning foreign exchange.

## Tourism in India

India with its abundant range in natural, geographic, cultural and artistic resources has huge potential to grow in tourism sector. Over the years, this industry has touched new heights and brought opportunities for development of Indian economy. Tourism is particularly important to vast and variegated country like ours as it contributes to national integration, promotes social and cultural ambience and plays a key role in socio-economic development **(Seth1996).** India accounts for 6.23 per cent to the national GDP, supports 8.78 percent of total employment and is the third largest export industry. The industry significantly generates foreign exchange earnings and helps development in other sectors like infrastructure, transportation, and handicrafts.

Foreign tourist arrivals showed an increase of 8.1 percent in 2010 with 5.58 million foreign tourist arrivals in India as compared to year 2009 with 5.17 million arrivals. Foreign Exchange Earnings(FEE) from tourism increased to Rs 64889 crore in 2010 with a growth rate of 18.1 percent over year 2009 when FEE were Rs 54960 crore. Thus tourism can help a long way in reviving the economy staggering under the burden of unemployment and fiscal deficit. Foreign tourism along with domestic tourism (the scope of which is manifold in comparison to foreign tourism in India) may contribute to India in its mission of becoming a developed country by 2020 ( **Bhardwaj and Singh 2010).**

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# MEASURING THE SATISFACTION LEVEL OF TOURISTS IN THE STATE OF HIMACHAL PRADESH AND PUNJAB

India with its uniqueness, charm and hospitality has the ability of attracting tourists by offering a varied range of tourism products. States in India are formulating aggressive marketing and promotion strategies to trap the diverse tourism forms in their respective regions. Eco-Tourism also called nature tourism is growing in regions like Darjeeling(West Bengal), Munnar(Kerala), Ooty(Tamil Nadu, Shimla(Himachal Pradesh), Nanital, Mussorie(Uttaranchal). Rural tourism and farm tourism are fast emerging in the states of Punjab and Haryana. The lofty snow covered mountains offer ample variety for nature lovers and adventure seekers in Himalayan regions. Shimla, Manila offer a wide range of mountain adventure activities. Goa and Kerala are favorite destinations among tourists for beach and water sports activities. Punjab, Bihar, Uttar Pradesh are well known religious and pilgrimage centers.

## Literature Review

Tourism industry is significantly contributing to the overall development in Himachal Pradesh and Punjab. In order to attract and retain the tourists, it is vital that places and services providers offer quality products to tourists. For more successful tourist development, it is crucial to attract tourists and to recommend the destination to others **Chen& Tsai (2007).** It is generally known in tourism that high quality of service would result in tourist satisfaction, create a positive word-of-mouth, and lead to repeat visits **Som and Badarneh (2011).** At this particular point of time satisfaction holds the key. If the tourist is satisfied with facilities at a particular destination, most likely he will pay another visit or recommend the destination to others. The primary function of measuring customer satisfaction is to provide information; information relates to how well destination is currently meeting its current needs **Wong&Law (2003)**. Tourism products can be defined as bundle of activities, services and benefits that comprise the whole tourism experience **Medlick and Middleton (1973)**. At a destination, product is presented as a bundle of elements such as transportation, accommodation, and entertainment. These can be drawn by the level of tourist satisfaction to each dimension **Zabkar, Brenc, and Dmitrovic (2010)**. Staff and skill performance and extra amenities provided were the determinants of tourists choice intention **Qu&Tsang (1998)**.Therefore each attribute of destination is important as consumer dissatisfaction with one of its attribute will lead to dissatisfaction with overall destination Pizam (1978).

**Bramwell (1998)** provided theories about tourism and examined how place marketing framework helps to understanding of tourist products satisfaction which can help in development and improvement in tourism product. **Kozak and Rimington (2000)** reported the findings of a study to determine destination attributes critical to the overall satisfaction level of tourists. **Beerli and Martin (2003)** analyzed the influence of socio-demographic characteristic as well as psychological characteristics on different components of perceived image. **Dwyer et al.(2009)** discussed the emerging trends in tourism and strategies to be adopted for destination, tourists and enterprise management. **Hui,Wan,Ho (2006)** examined the tourists expectation, perception and satisfaction visiting Singapore. The study found the likelihood of tourists to recommend the Singapore to their friends and relatives.Some researches measured the satisfaction level of tourist visiting India has been carried out. **Chaudhary (2000)** examined the satisfaction and expectation level of foreign tourists visiting India. The study found that India was not perceived positively. India lacked behind on infrastructure and safety issues. **Khaki & Sahaf (2011)** examined the satisfaction of tourists visiting Kashmir on three broad critical attributes: the tourist information, tourist infrastructure and tourist service and facilities. The study found that there was need for further improvement in services and facilities to make state competitive tourist destination. **Selvam, Indumathi& Babu (2010)** examined the satisfaction level of tourists visiting Tamil Nadu. The study found that in respect of factors such as availability of archaeology and architecture, availability of food and drinking water, transport, food and behavior of people, satisfaction was high. Factors such as accommodation, attitude of tourist guides was low. **Manhas & Mahajan (2009)** attempted to investigate the perception of tourists on tourism potential of Jammu Himalayas. The study found that there was need to market the destination because the state had not been able to fully exploit the potential. **Report on Tourism Survey for the state of Punjab (2010)** assessed the satisfaction of tourists with respect to various services in the state. The study found that the tourist were not satisfied with services such as quality of information, public convenience, entertainment places, availability of tourist guides and information centres.

## Objectives of the Study

To study the demographic profile of tourist visiting the states of Himachal Pradesh and Punjab and to study the satisfaction level of tourists with regard to the various services provided by the states of Himachal Pradesh and Punjab.

## Trend in Tourist Arrivals in the State Of Himachal Pradesh and Punjab

**Table 1: Tourist Arrivals in Himachal Pradesh and Punjab**

| Year | Total Tourist arrivals in Himachal Pradesh (in lakhs) | Percentage change | Total Tourist arrivals in Punjab (in lakhs) | Percentage change |
|---|---|---|---|---|
| 2005 | 71.4 | - | 4.34* | - |
| 2006 | 79.5 | 11.3 | 5.46* | 25.8 |
| 2007 | 88.21 | 10.9 | 3.74* | (31.5)# |
| 2008 | 97.5 | 10.53 | 6.67* | 78.3 |
| 2009 | 114.38 | 17.3 | 54.8* | 721.5 |
| 2010 | 133.28 | 16.5 | 107.21* | 95.6 |

# Negative Growth in this year.

Source: Ministry of Tourism Government of India, Market Research Division

*Figures have been estimated based on information available in Ministry of Tourism

Table 1 shows that there is an increasing trend in tourist arrivals in the state of Himachal Pradesh except a minor decline in the year 2007 and 2010 which can be attributed to base effect mainly and to some extent to the spread of HINI Influenza. The tourist arrival in Punjab shows an uneven trend.

## Hypothesis

$H_0$: There is no significant difference in the demographic profile of tourists visiting the states of Himachal Pradesh and Punjab.

$H_1$: There is no significant difference in the satisfaction level of tourists with regard to various services provided by the state.

## Research Design

The study covers two states of India viz. Punjab and Himachal Pradesh. In order to measure the satisfaction of tourists visiting these two states, a sample of 200 tourists using purposive sampling has been selected taking 100 respondents each from Punjab and Himachal Pradesh. The survey was conducted in the period of seven months ranging from October 2010 to May 2011. These tourists were selected by visiting tourist destinations and hotels in both the states. A scaled and well-constructed questionnaire was used as an instrument of data collection from tourists. The questionnaire duly covered various aspects of tourist satisfaction. These aspects included satisfaction with reference to Accommodation, Food & Beverages, Bar Services, Shopping, Room Service, Entertainment, Parking Facilities, Transport, Information Centre, Internet/Fax, Medical

Services, Beauty Parlors, Information of State as a Tourist Destination, Reservation Facility, Quality of Basic Infrastructure, Quality of Hotels/Lodge/Guest Houses, Quality & Variety of Food, Level of Hygienic Conditions, Safety & Security, Proper Display of Taxi/Rickshaw Fare, Quality & Cleanliness of Environment, Attitude of Local People and Travel Agents & Guide Services.

## Scheme of Analysis

In the initial stages, reliability coefficient was calculated to find the reliability of the satisfaction scale used. Chi-square test has also been used to test the significance of any possible relationship between demographic characteristics of tourists like gender, age, marital status etc. and touring state. Thereafter, to measure and compare the level of satisfaction of tourists visiting Punjab and Himachal Pradesh, firstly, factor analysis was used to extract some major components of satisfaction. Frequencies and descriptive statistics were calculated to find the details of these components. Finally, to test if there is any significant difference in the level of satisfaction of tourists visiting Punjab and Himachal Pradesh concerning these components, analysis of Variance (ANOVA) has been used.

## Data Analysis

A set of twenty-three variables was used to measure the level of satisfaction of tourists. Five point likert scale has been used ranging from highly dissatisfied to highly satisfied. Reliability analysis has been used to measure the reliability of scale. Generally, cronbach alpha value more than 0.7 is considered good. In this scale, cronbach alpha value is 0.825 which assures high reliability of scale of satisfaction used in this study.

**Table 2: Reliability Statistics**

| Cronbach's Alpha | N of Items |
|---|---|
| 0.825 | 23 |

Chi-square test was used to determine if any relationship existed between demographic characteristics of tourists and touring state. However, no significant relationship between the said variables was found. Thus, it assured that there is no significant demographic difference in the two samples of tourists selected from Punjab and Himachal Pradesh.

Factor analysis helped to reduce the data to six major components. Before going for factor analysis, KMO test and Bartlett's test were used to assure that the sample was adequate and data was spherical. KMO value more than 0.5 and significant chi-square value confirmed that the data was spherical and sample was adequate which was appropriate to use factor analysis.

**Table 3: KMO and Bartlett's Test**

| | | |
|---|---|---|
| Kaiser-Meyer-Olkin Measure of Sampling Adequacy. | | 0.808 |
| Bartlett's Test of Sphericity | Approx. Chi-Square | 1321.594 |
| | df | 253 |
| | Sig. | 0.000 |

Table 4 shows the explained variation of extracted factors. A total of six factors were extracted using principal component analysis of extraction. Figures in table showed that first factor which is major one has explained 17.24% variation. Second factor explained 11.06% variation. Remaining four factors have explained variation in between 6% to 10%. In total, these six factors have explained 57.16% variation which is a good proportion.

**Table 4: Total Variance Explained**

| Component | Initial Eigenvalues | | | Rotation Sums of Squared Loadings | | |
|---|---|---|---|---|---|---|
| | Total | % of Variance | Cumulative % | Total | % of Variance | Cumulative % |
| 1 | 5.587 | 24.293 | 24.293 | 3.965 | 17.241 | 17.241 |
| 2 | 2.225 | 9.676 | 33.969 | 2.545 | 11.064 | 28.305 |
| 3 | 1.61 | 7.001 | 40.97 | 1.991 | 8.658 | 36.963 |
| 4 | 1.343 | 5.838 | 46.808 | 1.649 | 7.169 | 44.132 |
| 5 | 1.271 | 5.525 | 52.333 | 1.555 | 6.761 | 50.893 |
| 6 | 1.112 | 4.834 | 57.167 | 1.443 | 6.274 | 57.167 |
| 7 | 0.966 | 4.202 | 61.369 | | | |
| 8 | 0.873 | 3.794 | 65.163 | | | |
| 9 | 0.839 | 3.646 | 68.809 | | | |
| 10 | 0.786 | 3.418 | 72.227 | | | |
| 11 | 0.731 | 3.178 | 75.405 | | | |
| 12 | 0.694 | 3.018 | 78.423 | | | |
| 13 | 0.637 | 2.772 | 81.195 | | | |
| 14 | 0.618 | 2.685 | 83.88 | | | |
| 15 | 0.585 | 2.543 | 86.423 | | | |
| 16 | 0.552 | 2.402 | 88.825 | | | |

| Component | Initial Eigenvalues | | | Rotation Sums of Squared Loadings | | |
|---|---|---|---|---|---|---|
| | Total | % of Variance | Cumulative % | Total | % of Variance | Cumulative % |
| 17 | 0.527 | 2.292 | 91.116 | | | |
| 18 | 0.464 | 2.02 | 93.136 | | | |
| 19 | 0.413 | 1.795 | 94.931 | | | |
| 20 | 0.329 | 1.431 | 96.362 | | | |
| 21 | 0.311 | 1.351 | 97.714 | | | |
| 22 | 0.279 | 1.214 | 98.928 | | | |
| 23 | 0.247 | 1.072 | 100 | | | |

*Extraction Method: Principal Component Analysis.*

Table 5 shows rotated factor loadings. Varimax rotation has been used to rotate data. An observation into the table shows that ten variables have been clubbed in first factor. These include Information of State as a Tourist Destination (TD), Quality of Basic Infrastructure of TD, Quality of Hotels/Lodge/Guest Houses of TD, Quality & Variety of Food of TD, Level of Hygienic Conditions of TD, Safety & Security at TD, Proper Display of Taxi/Rickshaw Fare at TD, Quality & Cleanliness of Environment at TD, Attitude of Local People in TD and finally Travel Agents & Guide Services at TD. It is clear that tourist as a primary concern look for facilities and safety issues at tourist destinations. Surprisingly, nothing related to facilities at hotels or guest houses have been given significant importance. This factor has been named as amenities and safety at tourist destinations.

Second factor indicated basic facilities available concerning hotels and guesthouses exclusively. These amenities are Accommodation, Food & Beverages, Room Service and Entertainment. Thus, this factor has been named as basic amenities of hotels and guesthouses. Third factor has covered secondary services available at hotels and guesthouses. These services include Information Centre at hotels, Internet/Fax, Medical Services and Shopping places at or near hotels and guesthouses. Fourth factor has covered two services namely parking facility and transportation arrangements at hotels and guesthouses. Fifth factor has been bar services at hotels and guesthouses. Last factor has covered reservation facility with regard to tourist destinations.

Thus, in brief it can be said that tourists look for services, facilities and safety concerns related to tourist destinations at first place. Thereafter, basic or primary facilities at hotels and guesthouses become the issue followed by secondary services. Finally, some exclusive services like bar service do not attract much of the attention of tourists.

**Table 5: Rotated Component Matrix[a]**

| | Component | | | | | |
|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 1. Accommodation | 0.259 | 0.769 | 0.107 | -0.014 | -0.004 | -0.104 |
| 2. Food & Beverages | 0.131 | 0.691 | 0.084 | -0.114 | 0.38 | 0.252 |
| 3. Bar Services | 0.076 | 0.02 | 0 | 0.034 | 0.752 | -0.006 |
| 4. Shopping | -0.004 | 0.317 | 0.46 | 0.138 | 0.334 | 0.031 |
| 5. Room Service | -0.128 | 0.775 | 0.209 | 0.129 | -0.029 | 0.02 |
| 6. Entertainment | 0.157 | 0.474 | 0.165 | 0.395 | -0.128 | 0.101 |
| 7. Parking Facilities | 0.21 | 0.195 | 0.147 | 0.594 | -0.004 | 0.081 |
| 8. Transport | 0.247 | -0.118 | 0.29 | 0.493 | 0.013 | 0.258 |
| 9. Information Centre | 0.14 | 0.2 | 0.688 | 0.012 | -0.009 | -0.045 |
| 10. Internet/Fax | 0.109 | 0.081 | 0.561 | 0.12 | -0.438 | 0.171 |
| 11. Medical Services | 0.057 | 0.059 | 0.678 | -0.033 | 0.094 | -0.024 |
| 12. Beauty Parlors | 0.026 | 0.053 | 0.351 | -0.722 | -0.06 | 0.141 |
| 13. Information of State as a Tourist Destination (TD) | 0.522 | 0.086 | 0.206 | 0.26 | -0.019 | 0.332 |
| 14. Reservation Facility | 0.059 | 0.095 | -0.035 | 0.07 | 0.028 | 0.854 |
| 15. Quality of Basic Infrastructure of TD | 0.695 | 0.124 | -0.122 | 0.204 | -0.251 | -0.024 |
| 16. Quality of Hotels/Lodge/Guest Houses of TD | 0.569 | 0.419 | -0.058 | -0.069 | 0.039 | 0.191 |
| 17. Quality & Variety of Food of TD | 0.423 | 0.365 | 0.214 | -0.201 | 0.399 | 0.218 |
| 18. Level of Hygienic Conditions of TD | 0.732 | 0.075 | 0.095 | 0.147 | 0.123 | -0.217 |
| 19. Safety & Security at TD | 0.682 | 0.14 | 0.222 | -0.036 | 0.123 | 0.193 |
| 20. Proper Display of Taxi/Rickshaw Fare at TD | 0.615 | -0.118 | 0.036 | -0.014 | 0.032 | 0.23 |
| 21. Quality & Cleanliness of Environment at TD | 0.75 | 0.114 | 0.095 | 0.156 | 0.049 | -0.243 |
| 22. Attitude of Local People in TD | 0.479 | 0.21 | 0.125 | 0.1 | 0.391 | 0.308 |
| 23. Travel Agents & Guide Services at TD | 0.509 | -0.087 | 0.149 | 0.307 | 0.317 | 0.132 |

In order to test the significance of difference, if any, concerning these six factors between tourists visiting Punjab and Himachal Pradesh, Analysis of Variance (ANOVA) has been used. Table 6 shows the results of ANOVA. It is clear that there has been a significant difference between tourists visiting Punjab and Himachal Pradesh in case of first, fourth, fifth and sixth factor. Thus, the difference lies in facilities and safety issues specific to tourist destinations, information technology with regard to hotels and guesthouses and finally bar services and reservation facilities. Based on mean values of level of satisfaction, it Is clear that in case of these four factors, tourists are highly satisfied in Himachal Pradesh as compared to Punjab. Hence, it is clear that to enhance tourist satisfaction, Punjab has mainly to put efforts about making it a safe, clean and popular tourist destination. In addition, there is a need to improve services at hotels and guesthouses in Punjab also.

**Table 6: ANOVA**

| | | Sum of Squares | df | Mean Square | F | Sig. |
|---|---|---|---|---|---|---|
| **REGR factor score 1 for analysis 1** | Between Groups | 8.573 | 1 | 8.573 | 80.913 | 0.003 |
| | Within Groups | 190.427 | 198 | .962 | | |
| | Total | 199.000 | 199 | | | |
| **REGR factor score 2 for analysis 1** | Between Groups | .048 | 1 | .048 | 0.047 | 0.828 |
| | Within Groups | 198.952 | 198 | 1.005 | | |
| | Total | 199.000 | 199 | | | |
| **REGR factor score 3 for analysis 1** | Between Groups | .241 | 1 | .241 | 0.240 | 0.625 |
| | Within Groups | 198.759 | 198 | 1.004 | | |
| | Total | 199.000 | 199 | | | |
| **REGR factor score 4 for analysis 1** | Between Groups | 5.981 | 1 | 5.981 | 60.135 | 0.014 |
| | Within Groups | 193.019 | 198 | .975 | | |
| | Total | 199.000 | 199 | | | |
| **REGR factor score 5 for analysis 1** | Between Groups | 12.722 | 1 | 12.722 | 130.523 | 0.000 |
| | Within Groups | 186.278 | 198 | .941 | | |
| | Total | 199.000 | 199 | | | |
| **REGR factor score 6 for analysis 1** | Between Groups | 25.798 | 1 | 25.798 | 290.491 | 0.000 |
| | Within Groups | 173.202 | 198 | .875 | | |
| | Total | 199.000 | 199 | | | |

## Status of Hypotheses

The results of Chi square test shows that there is no significant demographic difference in the two samples of tourists selected from the states of Punjab and Himachal Pradesh. Hence, the proposed hypothesis $H_0$ accepted. The results of ANOVA test shows that satisfaction level of tourists in the state of Himachal and Punjab differ significantly in respect of four factors (amenities and safety at tourist destinations, parking and transport arrangement, bar services at hotel and guest houses and reservation facility at tourist destinations. Hence the proposed hypothesis $H_1$ that the satisfaction level of tourists in two states do not differ significantly is partially rejected.

## Findings

The study covered twenty-three variables to measure the level of satisfaction of tourists in the states of Himachal Pradesh and Punjab. Results of the study showed that these twenty-three variables were categorized into six main factors using factor analysis which were...

1) Amenities and Safety at tourist destinations
2) Basic amenities of hotel and guest houses
3) Secondary services available at hotels and guest houses
4) Parking and Transport arrangement at guest houses
5) Bar services at hotel and guest houses
6) Reservation facility at tourist destinations

The results of the study showed that there were significant difference in satisfaction level of tourists visiting Punjab and Himachal Pradesh in case of first, fourth, fifth and sixth factor.

## Conclusion

Based on the results of the study, it is found that the tourists visiting the states were more satisfied at tourist destination in the state of Himachal Pradesh than in the state of Punjab with respect to factors such as amenities and safety at tourist destinations, parking and transport arrangement at guest houses, bar services at hotel and guest houses and reservation facility. In respect of factors such as basic amenities and secondary services available in hotels and guesthouses, the tourists showed an indifferent opinion. There is strong need on the part of the government of Punjab to build a framework for development of tourism in the State. Government in consultation with the private agencies should make plans for long term sustainable tourism development. Though many people are aware of Punjab as a tourist destination, yet it is surprising to note that at present very few tourists get to see the authentic culture and way of life of the people of Punjab. There was no tourism policy to provide guidelines to this industry for long period. The Department of Tourism, Punjab formulated the tourism policy in 2003. Moreover, aggressive marketing campaign must be carried out to build an image of Punjab as a major tourist destination. Celebrity endorsement may also help to market tourism. More and more national and international events must be conducted. Need of the day is to develop basic infrastructure facilities like construction and maintenance of highways, transportation facilities, electricity, sewerage etc. These services are the prerequisites for encouraging visitors. However, these services are not satisfactory to the expectations of tourists in Punjab. There is a major issue that is to ensure the safety and security of tourists. It is the prime concern of state as it builds confidence of the tourists that helps to enhance the image of the destination. Hygienic conditions, cleanliness of the state need an urgent attention of the Government, as there is a need for making Punjab clean and green to attract more tourists. The tourists showed dissatisfaction with travel arrangements (travel agents and guide services). It shows that tourist guides, tour operators, information centers are less developed and often not available. There is an urgent need for improving these services.

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# ANALYSIS OF SUCCESS RATE OF BED & BREAKFAST SCHEME IN INDIA: WITH SPECIAL REFERENCE TO COMMONWEALTH GAMES 2010 IN DELHI

**Rajinder Kumar Bhat***

## ABSTRACT

*India is a travelers delight and its capital is obviously seen as a must visit place for many reasons. Historical buildings, world class business markets, modern infrastructure, entertainment facilities, cultural extravaganza, best of Indian cuisines and hospitable people, all make it a must visit city for international tourists. International tourists need to be provided with world class accommodation facilities. Apart from star rated hotels, the city needs a budget class accommodation and what better than having B&B System which provides a glimpse of Indian culture associated with world class interiors, top-of-the-line facilities, well maintained bathrooms and endless experience with an Indian family for the entire life.*

*The Delhi Government's B&B Scheme has attracted 1,000 Delhiites who have a room to spare. All these property owners have been registered under the scheme and as estimated by the Delhi Government, this B&B Scheme will be a hit among the travelers during the CWG 2010. The present study is aimed at coming to a viewpoint that how the B&B Scheme has come out during the CWG 2010. A specific telephonic survey is the basis of the study which will answer some of the questions related to the success of the scheme. Some recommendations and suggestions will be made on the basis of the research findings which can be useful for the national and international tourism policy makers.*

***Key Words:*** Bed and Breakfast Scheme, India, Commonwealth games 2010.

## Introduction

Tourism as an economic activity is a part of the services sector of an economy and is a big source of employment generation and foreign exchange earning. Tourism could

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be for sight seeing, holidaying, education, business, medical treatment, rejuvenation of mind and body, sports etc. Tourism cuts across caste, colour, creed, race, language, etc. India has the potential to become a major tourist destination in the world with the demand growing at 10.1% p.a., the World Travel and Tourism Council (WTTC) has predicted( data retrieved on 15/12/2010). According to the latest research by Europe's leading Travel Magazine Conde Nast Traveller, India has entered the top ten tourist destinations of the world for the first time. India receives nearly 2.5 million visitors every year and 30% of them are tourists. The inbound tourism is concentrated in the North and Rajasthan. The South accounts for about 25% of inbound tourism.

India registered record foreign tourist arrivals in 2006 India achieved a 13.0 percent growth in terms of foreign tourist arrivals in the year 2006. From 3.92 million registered arrivals in 2005, the number has gone up to 4.43 million in 2006. Foreign exchange earnings from tourism have also shown a growth from Rs.25, 172 crores in 2005 to Rs.29, 604 crores in 2006, achieving an increase of 17.6 per cent. According to the latest World Tourism Organization statistics, 842 million international tourist arrivals were recorded last year of which India's share was 0.52 per cent. Though much smaller countries like Singapore received twice the number of tourists, the upside of the scenario is that the average duration of stay of a tourist in Singapore is 4.2 days, as against 26 days in India, according to the official data, and 12 days, according to the Indian tourism industry. At the WTM London in 2006, India was the cynosure of all eyes with India Tourism winning four World Travel Awards. The four awards were for "Asia's leading destination", Asia's leading tourism & convention bureau", "The World's leading travel destination TV commercial" of its Incredible India campaign and "The World's leading responsible tourism project" for the Endogenous Tourism Project.

## Objective of the Study

It is a very clear that the reason of launching Bed & Breakfast Scheme in Delhi was the XIX Commonwealth Games 2010. It was observed that Delhi I in shortage of approximately 30,000 rooms for visitors for the Commonwealth Games 2010. The Ministry of Tourism had expected approximately 53,000 domestic tourists and 1, 40,000 foreign tourists to visit the Games.

The main objective of the study is to find out the success rate of Bed & Breakfast Scheme during the Commonwealth Games 2010 held in October 2010. The B & B scheme is going to help the owners of these properties to earn a little extra income as declared by the Department of Tourism. Such B&B Schemes have been running in many other states and countries of the world but not everywhere they found to be successful. The present study will also try to find out the level of income generation to the owners of such establishments. It will also put focus on the satisfaction level of these property owners. The present study will also help in knowing the reasons for the failure of the scheme if any so that corrective measures can be taken by the future planners.

## Research Methodology

For the present study, primary and secondary data was collected in order to analyze the success rate of B&B Scheme. The secondary data like the addresses of the B&B Scheme Participants ha been collected from the website of Delhi Tourism. Some case studies of states like Kerala, where B&B Scheme is known a Homestays and Karnataka have been studied to find secondary data.

As far as the primary data is concerned, the data has been collected through a telephonic survey which has a sample size of sixty participants. The B&B Scheme has two types of participants-Gold and Silver. All participants were asked questions like-

- Did you receive any guest during Commonwealth Games 2010?
- How many days did they stay?
- How many members were they in the group?
- Were you satisfied with the promotion done by Delhi Government?
- Any official of Delhi Tourism visited your property during CWG 2010?
- Did you also receive any domestic tourists?
- Did tourist prefer Indian Breakfast during their stay?
- Are you happy to receive more tourists next time (overall response of the B&B owners)?
- Was any security assistance provided to your property?
- Had you any kind of problems while registering your premises for the B&B Scheme?

## A Glimpse of Bed & Breakfast Scheme in Delhi

The annual turnover of world tourism is a phenomenal sum of 3.4 trillion $. Tourism is the largest source of foreign exchange in countries like Singapore, Thailand and Maldives. China spends 3.8% of its budget on tourism and rates fifth in receiving the largest tourist arrivals (31.2 million). The World Travel and Tourism Council's satellite accounting research which measured tourism share in the national economy in 160 countries over the last 10 years, has found a global shift away from Europe to Asia and Far East in the last 10 years.

It can be a glad tiding for the Indian house-owners, especially the housewives as Indian government has launched "Incredible India Bed & Breakfast scheme" for the low budget tourists. Launching the scheme, the then Tourism Minister Ambika Soni said the government would choose spare rooms available with houseowners in at an affordable cost, for common tourists keen to be acquainted with Indian culture. This will be a unique opportunity for the house-owners, especially the housewives, because once their spare rooms are recognised under the scheme they will get an opportunity to earn that extra income while being at home.

The Delhi Government has also launched the Bed & Breakfast Scheme, under which the house owners are able to rent out their premises to the tourists coming to witness the CWG 2010. The scheme is supposed to meet the anticipated demand of approximately 53,000 domestic tourists and 1, 40,000 foreign tourists to visit the Games. According to the Delhi Tourism Department, the registration and other processes have been also simplified under the scheme adding the security issue would be specifically checked into. In this scheme, any owner of a premise who has spare bedrooms in their premise can apply. The number of rooms which can be let out under the scheme can be 2/3$^{rd}$ of the total bedrooms available with minimum 1 and maximum 5 bedrooms. The owner has to be the resident of the premises along with hi/her family. The owner has to provide parking space, an independent room, laundry facilities, boarding, air conditioning, and an opportunity to experience Indian customs, traditions and relish authentic Indian cuisine. There are two categories namely: Silver and Gold under which the application can be submitted depending upon the facilities being provided in the premises. The size of bedroom under Silver category should be 120 sqft and under Gold Category, it should be 200 sqft. The complete details of the premises registered shall be available on the website of Delhi Tourism.

## Research Findings

The primary and secondary data collected through different methods was analysed in the context of the research area. The telephonic survey helped in providing important information about the success of B&B Scheme during CWG 2010. The secondary data retrieved from the website of Delhi Tourism gave addresses and contact details of the registered owners of B&B establishments in Delhi. There are approx. 245 owners of B&B establishments in Delhi. A random selection of sixty establishments was made and the owners of these B&B establishments were telephoned. The primary data collected this way was analyzed and following outcomes were discovered.

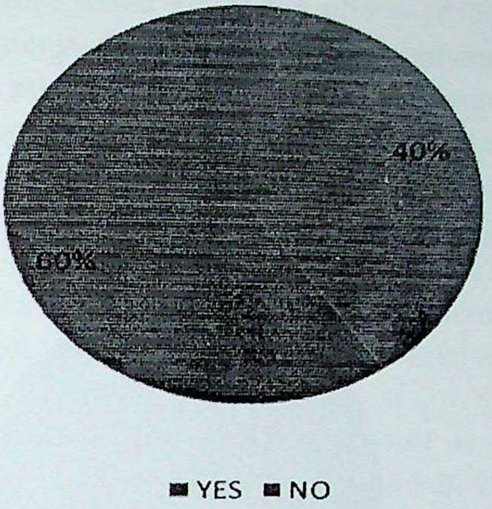

**Figure 1: Arrival of Tourists during CWG 2010**

The first and very basic question was about arrival of tourists to these B&B establishments during CWG 2010. 60% of the respondents stated that they had not received any tourists during CWG 2010. Remaining 40% of the respondents confirmed that they had received some tourists during CWG 2010. In fact one respondent told that the guests she received was the wife of one of the cyclist who was a participant in the cycling event at CWG 2010. One of the respondent stated that he received guests because his establishment is near the railway station.

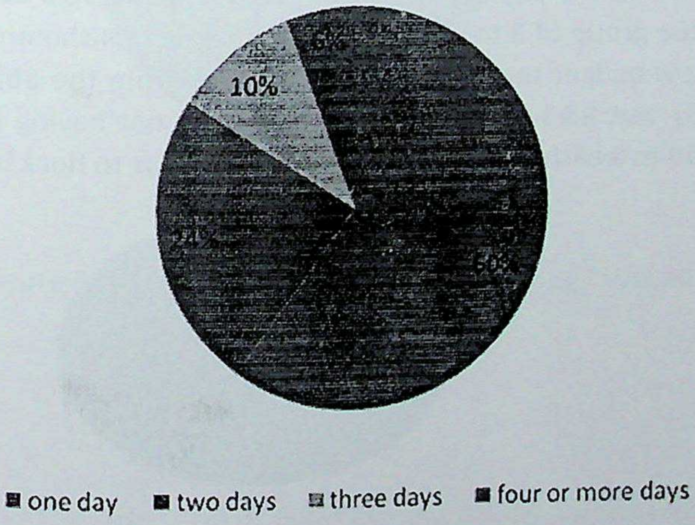

**Figure 2: Length of Stay in Days**

When the respondents were asked about the length of stay of these tourists, they told that 60% of the tourists stayed only for one day. 24% tourists stayed for two days, 10% tourists stayed for 3 days while only 6% stayed only for 4 or more days. The length of the stay of these tourists clearly indicated that most of the tourists of this B&B segment preferred staying for less number of days.

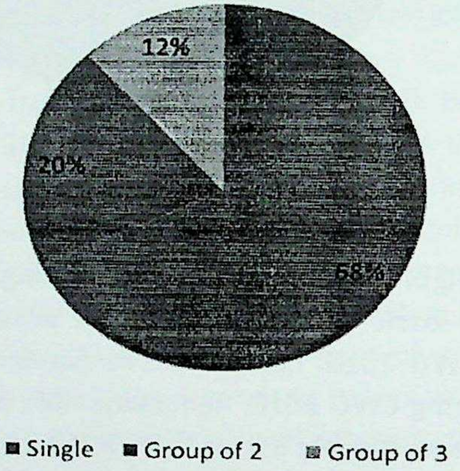

Figure 3 : No. of Tourists staying

Most of the respondents (68%) stated that tourists came as single tourist. Only 20% of the tourists were in a group of two. Only 12 % of the B&B establishment owners confirmed that the group of 3 tourists arrived at their establishments. Since segment is considered for low-budget tourists, it is clearly visible from the above data that single tourist frequently visit B&B establishments sometimes not having enough information about nearby B&B establishments made less group tourists to flock in.

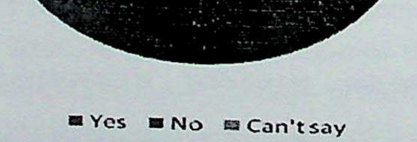

Figure 4: Satisfied with Delhi Tourism Promotion efforts

All the respondents were asked about the efforts made by Delhi Tourism to promote the B&B establishments. Only 28% of the respondents seemed to be happy with the promotional and other efforts done by Delhi Tourism. 70% respondents catagarily stated that there is a lot to be done to promote these B&B establishments. These respondants suggested that B&B should be marketed with a USP of Indian culture amalgamated with the accommodation. They said that these B&B stays offer a vacation that can truly provide the quintessential Indian experience. This is the USP, particularly for international tourists. Unlike other countries where B&B accommodations are what most tourists on a tight budget look for, in India it is this special experience of staying in Indian homes.

The respondents were also asked about the visit of any tourism department official to their B&B establishments during CWG 2010 (figure 5). 98% of the respondents denied any visit of such official to their premises. Also there was a very few respondents (2%) who confirmed the visit of the officials. Not only promotions but visit of DT officials is also required, as stated by most of the respondents.

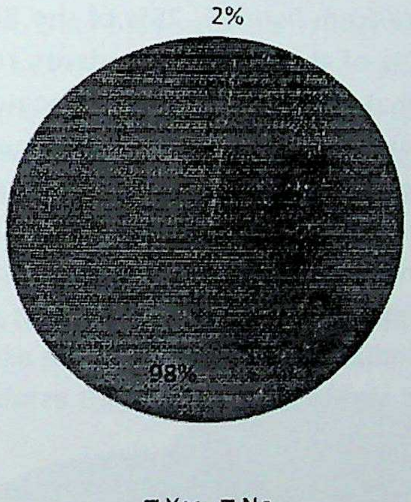

**Figure 5: Delhi Tourism Officials' Visit during CWG 2010**

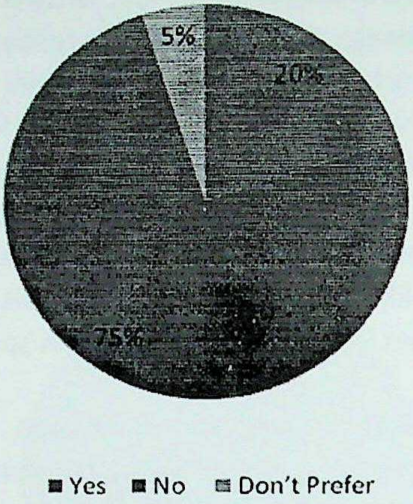

**Figure 6: Domestic Tourists Receiving**

The respondents were also asked about the arrival of domestic tourist to these establishments. As clearly visible from figure 6, 75% of the B&B owners do not receive any domestic tourists. Only 20% of the total respondents received domestic tourists. One of the respondent stated that he received tourists because his B&B establishments is near the railway station and also he had some domestic tourists who had not come to visit Delhi to watch CWG events. 5% of the respondents don't prefer to have domestic tourists in their B&B establishments.

About the liking of Indian breakfast (figure 7), 65% of the visitors liked the Indian breakfast. 20% of the tourists did not like Indian breakfast while 15 % did not prefer Indian breakfast. The liking of Indian breakfast can also be associated with the length of stay. Since most of the tourists stayed very less in B&B establishments, they would not like to have Indian breakfast.

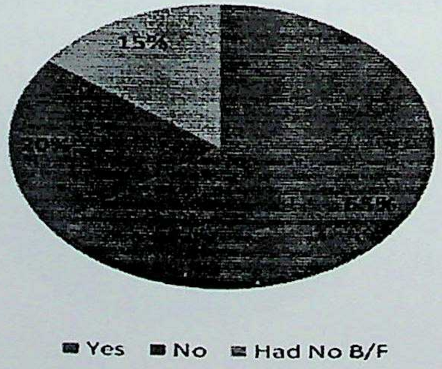

**Figure 7: Liking of Indian Breakfast**

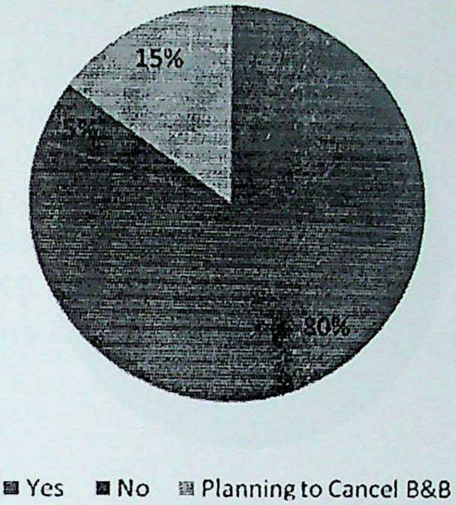

Figure 8: Owner's Overall Response

The overall response of the B&B owners was quite satisfactory. 80% of the respondents said that they would like to continue with the scheme as it provides a source of income to them. Only 5% respondents seemed unsatisfactory with the scheme while about 15% of the owners were planning to cancel their B&B registration. These respondents did not feel happy with the promotional efforts made by the Delhi Tourism.

Security is one of the major concerns why tourists did not turn to be the visitors in CWG 2010. Just before the starting of CWG, many countries had issued travel advisories to their nationals to avoid visiting CWG. This perhaps prevented many sports lovers to be the part of CG. The B&B establishments were also not provided any security assistance during the CWG 2010 (figure 9). The security of tourists is a serious concern worldwide.

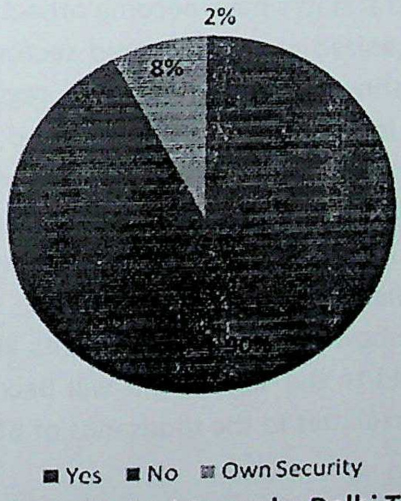

Figure 9: Security Assistance by Delhi Tourism

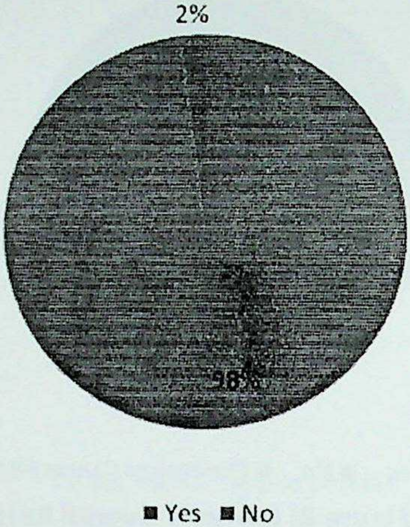

**Figure 10: Bottleneck in Registering for B&B Scheme**

The B&B establishments were also asked about any problem occurring during the registration process. Merely 2% confirmed very less problems in registering for the scheme. Rest 98% of the respondents had no problem while they registered for the B&B scheme. In fact, most of the participants had to do a little makeover of their properties for the registration process but that did not have any negative outcome.

## Conclusion

The Bed and Breakfast segment in India is going through a dynamic phase-as a market that has tremendous potential to tap both international and domestic tourism. Despite the fact that several states have become proactive in promoting this segment, it remains largely an unorganized and fragmented sector with disparate categorizations. The B&B establishment showed an interest while registering for the scheme but this enthusiasm can vanish if the segment is not supported by the authorities. This segment can bring a different source of income generation to the owners of these houses as they can provide a truly Indian experience to the international tourists. There is also an ongoing debate on whether a uniform rating system would actually work in a country which offers such diversified properties and facilities.

The present study shows how the respondents liked the scheme in the beginning but if no attention is paid to the segment, it will become unsuccessful, hence loosing income generation opportunities to the thousands of B&B establishments

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# STATISTICAL MODELS AND THEIR APPLICATIONS TO TOURIST INFLOW DATA IN JAMMU AND KASHMIR

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## ABSTRACT

*Tourism of J&K is one of the important major contributors to the state's economy. In this paper, an attempt has been made to discuss the application of statistical models in tourism. Computation power of high speed computers along with the availability of software packages has aided the application part of the statistical models. A numerical illustration of Tourism Inflow Data of Jammu and Kashmir (1991-2006) has been exploited with the help of statistical models for the study of pattern of the Tourists Inflow in the state of Jammu and Kashmir.*

***Key words***: Statistical Model, Trend, Growth, Forecast

## Introduction

One of the most remarkable application of probability theory is to depict the real life phenomenon through probability model or distribution. Statistical modeling means expressing a phenomenon in the form of mathematical equations. A large number of (discrete & continuous type) distributions have been evolved in the recent past in a very short span of time and now the number of distributions has gone very high. The obvious reason for this is that a distribution stands on some stipulated assumptions and any variation in these stipulated assumptions leads to a different situation. A distribution essentially needs revision and modification depending upon the nature of change in the situation and this gives rise to a new distribution. A researcher working in a practical field always comes across problems as to which distribution out of several distributions will be suitably fitted to his observed data. Modeling in science remains, partly at least, an art. In the literature (e.g., Johnson and Kotz (1970), Hogg and Craig (1970), Lawless (1982), McCullagh and Nelder (1988)), we come across different models e.g., Linear Models, Non-Linear Models, Regression analysis Models, Generalized Linear Models,

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Generalized Additive Models, Analysis of Variance Models, Stochastic Models, Simulation Models, Operation Research Models, Catalytic Models, etc. Out of large number of methods and tools developed so for analyzing the data the Statistical modeling is the latest innovations. Models are considered as the back bone of modern Statistics and data analysis.

## Material and Methods

The Jammu and Kashmir state is one of the special category states, which has been facing political disturbance since 1947. The states population is around 1.25 crore. In terms of human development index, J&K falls under lower middle category, whereas in terms of infrastructure Index, the state has been classified under low category (12th, 2004). The maiden economic survey, prepared by Government of J&K in January 2007, has clearly identified. The huge infrastructural deficit which the state is facing in both economic and social sectors (web). It is reported that during the first four years of the 10th plan, J&K economy attained a growth rate of 5.5 percent, while annual national economic growth, during the period was 7 percent. The states per-capita income, currently, works out to Rs 17,174, which is much below the national average of Rs 25,907. As per the estimation by the National Sample Survey Organization, the unemployment rate in the state stands at 4.21 per cent. In respect of physical infrastructure the state's record seems to be very poor. The road length per 100 sq. km. area in the state is 35.17 kms as against 104.04 km in the country. The state of J & K is divided into three major regions : Jammu, Kashmir and Ladakh. Jammu is called the city of temples, as in this region a large number of temples are located in addition to scenic splendor. Hill pilgrimage specially the world's renowned holy cave Vaishno Devi Ji is also located in the region. The number of devotees who visited Vaishno Devi Ji has crossed 62 lakhs in 2005. Ladakh is a mysterious land shrouded in myth and legend. It is an isolated cold desert region which is an apt choice for region tourist for its rich hill and natural beauties. The total tourist visiting Ladakh region have grown from 14 thousands in the year 1981 which went to 38.44 thousands during the year 2005. Now the principal region Kashmir valley located on the northern part of India between latitudes 32º 17′ to 37º 6′ north and longitude 73º 26′ to 80º 30′ east is extravagantly beautiful because it is not enough to say that it is beautiful in fact it has captured within its territories all the elements that poetry demands from nature as it is known as "Paradise on Earth". Major portion of the Valley is hilly and the height from sea level varies between 1000 feet to 28, 500 feet. There are mountains all around the Valley. Tourism as source of

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employment provides both direct and indirect employment both in the skilled and unskilled categories According to one estimate, 30 percent of the states population is directly or indirectly connected with the tourism industry.

The present study makes an extensive use of secondary data (in thousands)of tourists inflow in the state of Jammu and Kashmir for the period 1991-2006. To examine the trend and predict the tourists inflow various statistical models were used to fit the tourists inflow data. To identify the best model for a particular time series, generally model selection criteria $R^2$ (the ratio of the regression sum of squares to the total sum of squares ), Draper and Smith(1982) is used. It is generally considered that the more the value of $R^2$ , the better is the fit. But there are some limitations in interpreting it in this way. One of the major objections is that $R^2$ can overstate the value of a regression fit since the error sum of squares ESS can be reduced simply by adding further explanatory variables, even if they are not relevant to explaining the depending variable. Adjusted($R^2$)( An alternative to $R^2$ , denoted by Adj ($R^2$ ), which is adjusted for the degree of freedom associated with regression and total sums of squares) is also used to examine the best the best fit. It is to note that in some case of particularly bad fit $R^2$ can be negative and it does not exist when the number of observations is less than or equal to the number of parameters to be estimated. The greater the value of this criterion, the more is the accuracy of the model. Root mean square error (RMSE),the model with minimum RMSE is assumed to describe the data series more adequately. Akaike information criterion (AIC),the model with minimum AIC is closer to the best possible choice. The model with Bayesian information criterion (BIC)is assumed to describe the data series more adequately. This criterion is better than AIC. Further, the data with minimum value of Mean absolute error(MAE) and Mean absolute percent prediction(MAPE) is assumed to describe the data series more adequately. To test the goodness of fit of a model Anderson-Darling's value is observed. The model with minimum Anderson Darling's value is considered the best fit.

## Results and Discussion

Tourism is the fourth dimension of the modern economics as said by Andre Siegfried. Globally (WTTC 2000) using a tourism satellite accounting system, the travel and tourism industry constitutes 11 percent of the global GPD. The state is facing a turmoil and the government is adopting various methods to promote J&K tourism. Tourism is highly complex phenomenon and its magnitude is always on increase. Tourism develops national/international relations, earns a lot of foreign exchange and contributes substantially to the State Domestic Product. Tourism sustains various economic activities like trade, Hotels and restaurants, transport etc. and provides gainful employment to the people. In this manuscript we use different statistical models to examine the trend and predict the tourist inflow in J&K. For determining the best fit probability distributions, some well-known distributions are tried. The statistical parameters of the data series reported in various tables (below), shows that there is a large variation in the tourists inflow distribution pattern. It is important to note that estimation of different statistical parameters, particularly coefficient of skewness, kurtosis and Anderson-Darling chi-Square etc. will be helpful in selecting the best fit distributions for estimation of expected tourists inflow of J&K. For our data it seems that Log-Pearson 3 followed by Gen. Extreme Value is the best fitted model.

The results obtained (using standard statistical softwares like SPSS) for the tourists inflow data of J & K state (1991-2006) are as under:

**Descriptive Statistics**

| Statistic | Value |
|---|---|
| Sample Size | 16 |
| Range | 4101.6 |
| Mean | 4791.0 |
| Variance | 1.3387E+6 |
| Std. Deviation | 1157.0 |
| Coef. Of Variation | 0.2415 |
| Std. Error | 289.26 |
| Skewness | 0.82223 |
| Excess Kurtosis | 0.38436 |

| Percentile | Value |
|---|---|
| Min | 3182.3 |
| 5% | 3182.3 |
| 10% | 3367.7 |
| 25% (Q1) | 3857.3 |
| 50% (Median) | 4567.3 |
| 75% (Q3) | 5376.7 |
| 90% | 7030.4 |
| 95% | 7283.8 |
| Max | 7283.8 |

## Fitting Results

| # | Distribution | Parameters |
|---|---|---|
| 1 | Beta | ⍰$_1$=0.87364 ⍰$_2$=1.3146<br>a=3182.3 b=7283.8 |
| 2 | Cauchy | ⍰=601.97 ⍰=4577.1 |
| 3 | Chi-Squared | ⍰=4790 |
| 4 | Chi-Squared (2P) | ⍰=2082 ⍰=2954.3 |
| 5 | Dagum | k=145.37 ⍰=1.0259 ⍰=22.91 |
| 6 | Erlang | m=17 ⍰=279.43 |
| 7 | Erlang (3P) | m=2 ⍰=770.77 ⍰=2933.5 |
| 8 | Error | k=1.6965 ⍰=1157.0 ⍰=4791.0 |
| 9 | Exponential | ⍰=2.0873E-4 |
| 10 | Exponential (2P) | ⍰=6.2161E-4 ⍰=3182.3 |
| 11 | Fatigue Life | ⍰=0.2271 ⍰=4670.6 |
| 12 | Fatigue Life (3P) | ⍰=0.42289 ⍰=2499.0 ⍰=2068.3 |
| 13 | Frechet | ⍰=5.0055 ⍰=4090.4 |
| 14 | Frechet (3P) | ⍰=266.42 ⍰=2.3574E+5 ⍰=-2.3146E+5 |
| 15 | Gamma | ⍰=17.146 ⍰=279.43 |
| 16 | Gamma (3P) | ⍰=2.4098 ⍰=770.77 ⍰=2933.5 |
| 17 | Gen. Extreme Value | k=0.00752 ⍰=942.96 ⍰=4239.6 |
| 18 | Gen. Gamma | k=1.0242 ⍰=18.38 ⍰=279.43 |
| 19 | Gumbel Max | ⍰=902.13 ⍰=4270.2 |
| 20 | Gumbel Min | ⍰=902.13 ⍰=5311.7 |
| 21 | Hypersecant | ⍰=1157.0 ⍰=4791.0 |

| | | |
|---|---|---|
| 22 | Inv. Gaussian | ⍰=82145.0 ⍰=4791.0 |
| 23 | Inv. Gaussian (3P) | ⍰=16437.0 ⍰=2816.7 ⍰=1974.3 |
| 24 | Johnson SB | ⍰=1.4809 ⍰=1.2657<br>⍰=8228.2 ⍰=2635.2 |
| 25 | Kumaraswamy | ⍰$_1$=1.05 ⍰$_2$=1.15<br>a=3182.3 b=7283.8 |
| 26 | Laplace | ⍰=0.00122 ⍰=4791.0 |
| 27 | Levy | ⍰=4553.1 |
| 28 | Levy (2P) | ⍰=804.38 ⍰=3051.6 |
| 29 | Log-Gamma | ⍰=1311.2 ⍰=0.00644 |
| 30 | Log-Logistic | ⍰=7.0892 ⍰=4531.7 |
| 31 | Log-Logistic (3P) | ⍰=4.0053 ⍰=2437.0 ⍰=2149.8 |
| 32 | Log-Pearson 3 | ⍰=42.981 ⍰=0.03559 ⍰=6.9189 |
| 33 | Logistic | ⍰=637.91 ⍰=4791.0 |
| 34 | Lognormal | ⍰=0.22591 ⍰=8.4485 |
| 35 | Lognormal (3P) | ⍰=0.40146 ⍰=7.8595 ⍰=1987.5 |
| 36 | Nakagami | m=3.9733 ⍰=2.4208E+7 |
| 37 | Normal | ⍰=1157.0 ⍰=4791.0 |
| 38 | Pareto | ⍰=2.6099 ⍰=3182.3 |
| 39 | Pareto 2 | ⍰=63.066 ⍰=3.0601E+5 |
| 40 | Pearson 5 | ⍰=20.217 ⍰=92050.0 |
| 41 | Pearson 5 (3P) | ⍰=12.584 ⍰=44159.0 ⍰=983.35 |
| 42 | Pearson 6 | ⍰$_1$=629.48 ⍰$_2$=20.866 ⍰=151.2 |
| 43 | Pert | m=4569.9 a=3182.3 b=7283.8 |

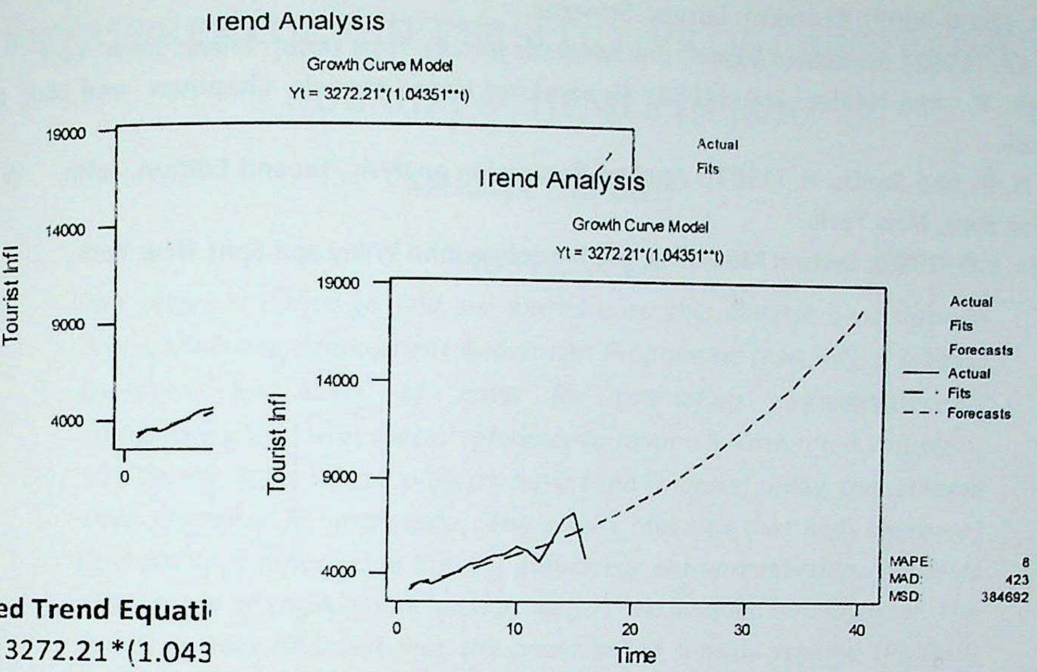
| | | |
|---|---|---|
| 44 | Power Function | ⍰=0.35421 a=3182.3 b=7283.8 |
| 45 | Rayleigh | ⍰=3822.6 |
| 46 | Rayleigh (2P) | ⍰=1608.9 ⍰=2810.6 |
| 47 | Reciprocal | a=3182.3 b=7283.8 |
| 48 | Rice | ⍰=4649.3 ⍰=1138.6 |
| 49 | Student's t | ⍰=2 |
| 50 | Triangular | m=3906.8 a=3182.3 b=7283.8 |
| 51 | Weibull | ⍰=4.9536 ⍰=5026.0 |
| 52 | Weibull (3P) | ⍰=1.5017 ⍰=1886.4 ⍰=3081.7 |

## Goodness of Fit – Summary

| # | Distribution | Kolmogorov Smirnov | | Anderson Darling | | Chi-Squared | |
|---|---|---|---|---|---|---|---|
| | | Statistic | Rank | Statistic | Rank | Statistic | Rank |
| 1 | Beta | 0.12871 | 26 | 1.8116 | 36 | 3.0625 | 41 |
| 2 | Cauchy | 0.12969 | 27 | 0.30588 | 25 | 2.9958 | 40 |
| 3 | Chi-Squared | 0.55097 | 49 | 100.24 | 50 | 13.141 | 46 |
| 4 | Chi-Squared (2P) | 0.60654 | 51 | 499.68 | 52 | 18.062 | 47 |
| 5 | Dagum | 0.39919 | 46 | 3.8337 | 45 | 31.482 | 50 |
| 6 | Erlang | 0.09316 | 9 | 0.20149 | 18 | 0.22095 | 24 |
| 7 | Erlang (3P) | 0.23122 | 40 | 0.97519 | 34 | 1.8245 | 38 |
| 8 | Error | 0.14473 | 31 | 0.33025 | 29 | 0.96182 | 33 |
| 9 | Exponential | 0.48532 | 48 | 4.474 | 48 | 18.753 | 48 |
| 10 | Exponential (2P) | 0.19998 | 38 | 2.2416 | 40 | 2.054 | 39 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 11 | Fatigue Life | 0.10055 | 16 | 0.17729 | 16 | 0.11632 | 19 |
| 12 | Fatigue Life (3P) | 0.09745 | 13 | 0.1584 | 12 | 0.50879 | 28 |
| 13 | Frechet | 0.16218 | 34 | 0.32702 | 27 | 0.46873 | 27 |
| 14 | Frechet (3P) | 0.08276 | 2 | 0.15277 | 6 | 0.06351 | 11 |
| 15 | Gamma | 0.10739 | 19 | 0.20566 | 19 | 0.00425 | 2 |
| 16 | Gamma (3P) | 0.11068 | 21 | 0.17484 | 14 | 0.44472 | 26 |
| 17 | Gen. Extreme Value | 0.09368 | 10 | 0.1421 | 2 | 0.08726 | 17 |
| 18 | Gen. Gamma | 0.1145 | 24 | 0.2183 | 20 | 0.01073 | 4 |
| 19 | Gumbel Max | 0.08298 | 3 | 0.14528 | 3 | 0.06931 | 12 |
| 20 | Gumbel Min | 0.20676 | 39 | 1.4078 | 35 | 0.13239 | 22 |
| 21 | Hypersecant | 0.15644 | 33 | 0.32735 | 28 | 3.7462 | 42 |
| 22 | Inv. Gaussian | 0.13989 | 30 | 0.29404 | 24 | 0.04897 | 9 |
| 23 | Inv. Gaussian (3P) | 0.09558 | 12 | 0.15715 | 11 | 0.51552 | 29 |
| 24 | Johnson SB | 0.1006 | 17 | 0.15662 | 10 | 0.56479 | 31 |
| 25 | Kumaraswamy | 0.23471 | 41 | 3.2266 | 44 | 1.7604 | 36 |
| 26 | Laplace | 0.18068 | 37 | 0.39112 | 32 | 1.7649 | 37 |
| 27 | Levy | 0.57084 | 50 | 6.3396 | 49 | 33.2 | 51 |
| 28 | Levy (2P) | 0.33713 | 44 | 1.9626 | 37 | 8.5364 | 45 |
| 29 | Log-Gamma | 0.095 | 11 | 0.15861 | 13 | 0.11741 | 21 |
| 30 | Log-Logistic | 0.11071 | 22 | 0.2208 | 21 | 0.21105 | 23 |
| 31 | Log-Logistic (3P) | 0.08679 | 6 | 0.15252 | 5 | 0.03967 | 7 |
| 32 | Log-Pearson 3 | 0.08169 | 1 | 0.14039 | 1 | 0.0788 | 14 |
| 33 | Logistic | 0.14811 | 32 | 0.32149 | 26 | 1.0289 | 34 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 34 | Lognormal | 0.09981 | 15 | 0.17554 | 15 | 0.11708 | 20 |
| 35 | Lognormal (3P) | 0.0919 | 8 | 0.15446 | 8 | 0.52411 | 30 |
| 36 | Nakagami | 0.10905 | 20 | 0.27582 | 23 | 0.0027 | 1 |
| 37 | Normal | 0.13811 | 29 | 0.35503 | 30 | 0.92464 | 32 |
| 38 | Pareto | 0.24202 | 42 | 2.7714 | 42 | 5.006 | 43 |
| 39 | Pareto 2 | 0.47923 | 47 | 4.3879 | 47 | 18.886 | 49 |
| 40 | Pearson 5 | 0.08533 | 4 | 0.15378 | 7 | 0.08257 | 15 |
| 41 | Pearson 5 (3P) | 0.08704 | 7 | 0.15196 | 4 | 0.05266 | 10 |
| 42 | Pearson 6 | 0.08664 | 5 | 0.15482 | 9 | 0.08418 | 16 |
| 43 | Pert | 0.16548 | 35 | 2.9832 | 43 | 0.09375 | 18 |
| 44 | Power Function | 0.34262 | 45 | 3.8681 | 46 | 5.5104 | 44 |
| 45 | Rayleigh | 0.29285 | 43 | 1.9719 | 38 | 0.00719 | 3 |
| 46 | Rayleigh (2P) | 0.11231 | 23 | 0.22501 | 22 | 0.06962 | 13 |
| 47 | Reciprocal | 0.17102 | 36 | 2.3369 | 41 | 1.3438 | 35 |
| 48 | Rice | 0.09939 | 14 | 0.36172 | 31 | 0.01695 | 5 |
| 49 | Student's t | 1.0 | 52 | 261.36 | 51 | 2.4602E+8 | 52 |
| 50 | Triangular | 0.13368 | 28 | 2.1945 | 39 | 0.04167 | 8 |
| 51 | Weibull | 0.11742 | 25 | 0.61114 | 33 | 0.02838 | 6 |
| 52 | Weibull (3P) | 0.10657 | 18 | 0.18222 | 17 | 0.4344 | 25 |



**Fitted Trend Equati**

Yt = 3272.21*(1.043

**Accuracy Measures**

MAPE: 8.28486

MAD: 423.146

MSD: 384692

$R^2 = .760$

**Forecast of Tourist Inflow in the State of J&K**

| Year | 2010 | 2012 | 2014 | 2016 | 2018 | 2020 |
|---|---|---|---|---|---|---|
| Forecast | 7669.1 | 8350.9 | 9093.4 | 9901.8 | 10782.2 | 11740.8 |

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# ENTREPRENEURSHIP PERSPECTIVE OF CREDIT LINKED SUBSIDY SCHEMES IN J&K

Mehraju Din Bhat *

## ABSTRACT

*The paper is aimed to find out entrepreneurship development through Prime Ministers Employment Generation Programme (PMEGP), a scheme launched by Govt. of India for promoting self-employment/ entrepreneurship with special reference to Jammu & Kashmir. A sample of 102 beneficiaries whose projects have been financed under this scheme were identified for this study. The results revealed that high degree of desirability is reflected in the self employed/ entrepreneurship vis-à-vis other types of employment such as waged and salaried employment. The results further depicted that the credit linked subsidy scheme (PMEGP) acts as an important source of finance for the entrepreneurs. However, so far irrational approach is being adopted while financing the projects under this scheme and the clearance process for the projects takes much time which results de-motivation and loss of dynamism among the prospective entrepreneurs. The study further revealed that whole process needs to be restructured for effective implementation of this scheme.*

**Key Words:** *Prime Ministers Employment Generation Programme, Self Employment, Entrepreneurship Development Programme, Business Venture.*

## Introduction

The promotion of the entrepreneurship offers the opportunity to diversify employment and income-earning alternatives for the large chunk of the population. Entrepreneurship is a key component to generate wealth and jobs and sustaining economic vitality (De Soto, 1989). The self employed people accounted for over one half of all microenterprise employment in the developing world (Mead and Liedholm, 1998) and they becomes self sustaining economic juggernauts that contribute significantly to the macro-economy (Pisani and Patrick, 2002).

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Due to the potential of the entrepreneurship in generating employment and exploration of the resources Government of India (GOI) introduced many self employment schemes which provide credit linked subsidy to those who take initiative in self employment/entrepreneurship. Prominent among such schemes were Prime Minister's Rozgar Yogina (PMRY) and Rural Employment Generation Programme (REGP). Both of the schemes although devised after rigorous thought work had some demerits while implementing at grass root level. It was because of this reason that a need was felt by GOI to merge both schemes in such a way that maximum benefits could reach to the prospective entrepreneurs. To address the grass root needs of the prospective entrepreneurs and shortfalls in the previous mentioned schemes, GOI introduced a new scheme called 'Prime Ministers Employment Generation Programme (PMEGP) in the beginning of 2008. The main objectives of the scheme were to generate employment opportunities in rural and urban areas, to bring together widely dispersed traditional artisans/ rural and urban unemployed youth and give them self employment/entrepreneurial opportunities, and to provide continuous and sustainable employment opportunities.

Under this scheme the quantum of credit linked subsidy for urban is 15% and for rural 25% of the total project cost for general category beneficiaries while as, for special category beneficiaries (SC/ST, Women's, and Minorities etc.) the subsidy for urban 25% and for rural 35% of the total project cost. However, the beneficiaries have to contribute 10% of the total project cost in case of general category and 5% in case of special category. The beneficiary should be above 18 years of age and there is no income ceiling. In case of the project costing above 10.0 lac in the manufacturing sector and above 5.0 lac in the service sector, the beneficiary should possess qualification of middle pass. Under this scheme only new business ventures are eligible for financial assistance.

This scheme has been mandated for implementation to Khadi and Village Industries Commission (KVIC), Mumbai, a statutory body created by the Khadi and Village Industries Commission Act, 1956, which is the single nodal agency at the national level. At the State level, the scheme is implemented through State Directorates of KVIC, State Khadi and Village Industries Boards (KVIBs) and District Industries Centers (DIC's) in rural areas. In urban areas, the Scheme is being implemented by the State District Industries Centers (DICs) only. The KVIC is coordinating with State KVIBs/State DIC's and monitor performance in rural and urban areas. The KVIC and DIC's also involve, Udyami Mitras empanelled under Rajiv Gandhi Udyami Mitra Yojana (RGUMY), Panchayati Raj Institutions and other NGOs of repute in identification of beneficiaries under PMEGP.

## Need for the Study

It is a matter of fact that the various credit linked schemes have contributed towards the entrepreneurship development and employment generation in India. Not only Central Government, but also State Government, has initiated many schemes for the unemployed youth through various agencies to mitigate the looming unemployment problem in the State of Jammu &Kashmir. To motivate and channelize the unemployed youths to start their own income generating units is a herculean task in a conservative society like J&K where the public sector has been the most preferred choice of employment. Those who want to make a career in self-employment/ entrepreneurship have got a very rough road to tread on due to the non availability of smooth flow of credit, lack of angle financers, lack of entrepreneurial culture and other innumerable entry barriers. In such situation the self-employment/ entrepreneurship development schemes have much relevance in promoting entrepreneurial culture in the state through motivation by way of subsidies and smooth flow of finance for their ventures.

The success of any scheme for self employment/entrepreneurship arena is determined by its field applicability, as previous schemes turned out to be unpopular and youth have shown low response which can be attributed to many things such as information gap, cumbersome documentation, insufficient credit flow etc. However the PMEGP has been above on merits on some counts, but its real impact can be assessed from the experience of those who opted this scheme to kick start their business ventures. Since the scheme is still in infancy so far its implementation is concerned in J&K. Therefore, the scheme has to be seen at ground level in its actual practice so that, the hiccups in its effective implementation in pursuit of entrepreneurship development and employment generation are addressed.

## Objectives of this Research

The present study has been taken with the following objectives:

i) to find out the status of the PMEGP scheme in J&K State;
ii) to study the problems faced by the prospective entrepreneurs in starting their business venture under PMEGP banner.
iii) To identify the channels of communication used by the implementing agencies in disseminating information about the scheme;
iv) to study the procedure adopted by various stakeholder agencies while implementation; and

v) to draw conclusion, highlight policy implications and to provide result oriented guidelines and suggestions for bring out qualitative improvements in the existing scheme.

## Method

### Sample

This empirical study was conducted in the State of J&K. A random sample of 102 nascent entrepreneurs (those who were provided access to bank finance along with subsidy to finance their projects under PMEGP scheme) were taken for this study. Among total respondents, 69.61% of the respondents were from the business class families and 30.39% were from the service class families. In case of the previous experience of the beneficiaries, 33.33% of the respondents were not having any experience in business, while as 48.04% were having experience below five years in the business, 18.63% above five years of experience in business management.

### Measurement

The respondents were asked to give their responses on a questionnaire and the schedule was also used. Besides they were also interviewed to express their view about the scheme. The questionnaire comprised of two broad sections. In the first section of the questionnaire which aimed to see the status of the scheme, the respondents were asked about i) Why they have opted for entrepreneurship/self-employment *(1. Because of their personal interest, 2. On the advice & motivation by their family members, relatives and friend etc. 3. Due to failure to get a Govt. job, 4. Due to incentives offered by the various schemes.).* ii) How they got information about the PMEGP scheme, *(1. Through a friend/relative etc, 2. Through electronic and print media, 3. Through the officials of KVIB, KVIC, DIC Banks etc, 4. Through the internet.)* Where they faced problems in establishing a business venture under PMEGP *(1.In financing the project from the banks 2. In getting PMEGP case sanctioned by the selection committee for margin money, 3. In preparing the supporting documents for releasing the finance. 4. Nowhere).* How much of the total project cost was sanctioned in their favor by the selection committee of PMEGP, *(1.100%, 2. 75%, 3. 50%, 4. 25%).* How much time it took them to get release of finance *(1. Three months, 2. Six months, 3.Nine months, 4. More than a year).* How much knowledge they had of the technical aspects of the scheme before joining an EDP course *(1. Large extent, 2. Some extent, 3.Little extent 4. No extent).* What is most appropriate time of the EDP Intervention *(1.After the case/business project is sanctioned, 2. Before they select a business project idea).*

In the second section of the questionnaire the evaluation of the EDP which is a part of the scheme was done. The respondents were asked to evaluate the EDP course they had participated. The degree of the focus of the EDP course on its various aspects was measured on four point likert scale 1=no extent and 4= larger extent was measured. The aspects were the Motivation and Refinement of Entrepreneurial Attitude and Values, Management Aspects/ Soft Skills, Technical Aspects of a Business Venture, Project Planning and Management. At the end the respondents were asked to anchor their level satisfaction on the scale. The statistical techniques used in this study were percentage mean score, mean for central tendency and standard deviation for measuring the scatterness.

**Table 1.1 Sample Size and Its Characteristics**

| | Parameter | R1(%) | R2(%) | R3(%) | R4(%) |
|---|---|---|---|---|---|
| 1 | Previous Experience | 33.33 | 48.04 | 18.63 | xxx |
| 2 | Family Background | 69.61 | 30.39 | xxx | xxx |
| 3 | Total Sample | 102 | xxx | xxx | xxx |

*In case of Education Qualification R1= Middle/Under-Matric R2=Undergraduate R3=Graduate R4=Post-Graduate. In case of Family Background R1=Business Class R2= Service Class. In case of the Previous Business Experience of the respondents R1=No Experience R2=Less than five Years R3=Above 5 Year of Experiences.*

## Results and Discussions

### Entrepreneurship/Self-employment as a Career

New business is not created by accident. There is enough impeding the process involved in the business startup to suggest that entrepreneurial actions are clearly intentional (Shaver,1985). Innovation that is Individual's intention to accomplish something new, to get recognition which describes an individual's intention to have status, approval and recognition from ones family, friends and from those in the community (Bonjean, 1966), independence(individuals desire for freedom, control and flexibility in the use of one's time (Schein,1978), learning, personal development (Scheinberg and McMillan,1988), welfare and role which include individuals desire to follow family traditions or emulate the example of the others(Shane et al., 1991). There are other environment and economic factors which have an influence upon a person's decision for self employment entrepreneurial career.

The table 1.2 reflects 19.61% of the respondents reported that they took self-employment/entrepreneurship as a career due to failure to get a Govt. job, while as

68.62% of the respondents reported that they took decision of self employment by their own choice to make a career in entrepreneurship which implies that high degree of desirability is reflected by the respondents in the self employed sector/entrepreneurship vis-a-vis other types of employment such as waged and salaried employment in J&K. However, it is also revealed that the self employment schemes do not have much impact on ones decision to make a career in entrepreneurship, as very small percentage (1.97%) of the respondents' report that they opted for self employment/entrepreneurial career due the availability and attraction of the schemes.

## Communication Channels for Awareness

The information technology boom in the world has turned world into a global village and lead death of distance. The traditional channels of communication have transformed in to new fast channels. Table 1.2 reflects that 56.86% of the respondents report that they got the information about the PMEGP scheme through field officials of the departments of the KVIB, KVIC, DIC and Banks. However, electronic and mass media channels of communication have been very poorly rated in disseminating information and creating awareness in both rural and urban areas. The traditional channels such as the word of mouth communication through friends and relatives is placed at rank 2nd in creating awareness of PMEGP scheme as, 28.43% of the respondents got information about the scheme through this channel of communication.

**Table 1.2: Descriptive Statistics: Prime Ministers Employment Generation Programme (PMEGP)**

| Variable | 1 (%Score) | 2 (%Score) | 3 (%Score) | 4 (%Score) |
|---|---|---|---|---|
| Why you have taken entrepreneurship/self employment as a Career | 68.62<br>(f=70) | 9.8<br>(f=10) | 19.61<br>(f=20) | 1.97<br>(f=2) |
| How Do You Come to Know about PMEGP Scheme | 28.43<br>(f=29) | 13.72<br>(f=14) | 56.86<br>(f=58) | 0.98<br>(f=1) |
| Where Do You Faced the Problems in Availing the Scheme | 55.88<br>(f=57) | 14.70<br>(f=15) | 16.67<br>(f=17) | 12.75<br>(f=13) |
| How Much Amount of the Total Project Cost was Sanctioned in Your Favor under the Scheme | 18.63<br>(f=19) | 25.49<br>(f=26) | 43.14<br>(f=44) | 12.75<br>(f=13) |

| | | | | |
|---|---|---|---|---|
| How Much Time it Took to Get Release the Funds Under the Scheme | 17.65<br>(f=18) | 29.41<br>(f=30) | 29.41<br>(f=30) | 23.53<br>(f=24) |
| To What Extent You Where Knowing about the Technical Aspects of the Scheme before Joining an EDP Course | 18.63<br>(f=19) | 41.18<br>(f=42) | 34.31<br>(f=35) | 5.88<br>(f=6) |
| What is the Most Appropriate time of the EDP Intervention | 39.22<br>(f=40) | 60.78<br>(f=62) | 0.0<br>(f=0.0) | 0.0<br>(f=0.0) |

## Problems Faced by the Entrepreneurs while Availing Finances under the Scheme

In the initial stage of the business venture many problems crop up, as the creation of new venture is a sequence of the events. In the beginning the major challenge is faced in identifying viable business opportunity which involves planning, identifying possible markets and methods of delivery (Cooper, 1982; Vesper, 1990) as well as the identification of the proper resources to support the new business venture (Steveson & Gumpert, 1985; Bird, 1989). However, for small business firms the main source of the finance during their first 2 years of operation are commercial banks (Berger and Udell, 1998p. 620). The credit flow is the major hurdle first generation entrepreneur's face in their business establishment phase, therefore, the various schemes of the Central & State Governments. for self employment/entrepreneurship development are made to address this major hurdle that is the smooth flow of credit to finance the new business ventures.

Table 1.2 reveals that the major problems faced by the beneficiary is to get approval of the scheme linked credit for their project from the banks, as 55.88 % of the respondents report that once they get the sanction of the case by the selection committee PMEGP and after getting their margin money from the KVIC which is a nodal agency, the problems then arises in banks where the rest of the project finance is not given easily. Moreover, once the Bankers give approval for financing the project, mostly it is given in the form of cash credit limit, with which they are not able to start and execute their ventures as planed and they search for other alternatives of finance at this juncture to support their venture which they are not able to get easily. The financing of projects under this scheme is not provided as per the capital structure given in the detailed project reports (DPR's). This irrational approach in financing the projects by banks is creating lot of problems in the business startup which leads to aborted ventures.

EDP. The lowest mean is reflected against the response of 'technical aspects of the business venture' with the mean M=3.39 and SD=0.62. It implies that the EDP focus has remained comparatively a bit more on motivational aspects. However, the technical aspects of the EDP course are lagging behind other aspects. The technical aspects of the business venture are not talked at length in the EDP's. This is due the reason that there is no segregation of the participants on the basis of the business activity. All the beneficiaries participate in an EDP which is of general nature not of customized manner. In such EDP's the trade specific technical aspects which is part of skill is not imparted them in length. Moreover, the respondents reported satisfaction with the overall EDP course with a mean (M=3.32 and SD=0.75) and a percentage score of 83% level of satisfaction.

**Table 1.3 Focus of Entrepreneurship Development Programme (EDP) and Level of Participants Satisfaction**

| Factors | 1 (%Score) | 2 (%Score) | 3 (%Score) | 4 (%Score) | Mean | St. Deviation | Rank |
|---|---|---|---|---|---|---|---|
| Motivation and Refinement of Entrepreneurial Attitude and Values | 0.0<br>(f=0.0) | 4.90<br>(f=5) | 27.5<br>(f=28) | 67.65<br>(f=69) | 3.63 | 0.58 | 1 |
| Technical Aspects of a Business Venture | 0.0<br>(f=0.0) | 6.86<br>(f=7) | 47.06<br>(f=48) | 46.08<br>(f=47) | 3.39 | 0.62 | 4 |
| Entrepreneurial Management/Soft Skills | 0.0<br>(f=0.0) | 7.84<br>(f=8) | 43.14<br>(f=44) | 49.02<br>(f=50) | 3.41 | 0.63 | 3 |
| Project Planning and Management | 1.96<br>(f=2) | 5.88<br>(f=6) | 37.25<br>(f=38) | 54.90<br>(f=56) | 3.45 | 0.70 | 2 |
| Overall Satisfaction from EDP Course | 0.0<br>(f=0.0) | 16.67<br>(f=17) | 34.31<br>(f=35) | 49.02<br>(f=50) | 3.32 | 0.75 | - |

## Recommendations

The following recommendations are put forth for the effective implementation of the PMEGP scheme by the various stakeholders.

i) The EDP should be the starting point for the aspirants of self-employment/entrepreneurship. Once they undergo an EDP course they should be asked to make their preliminary project reports (PPR) for financing their projects under the banner of PMEGP scheme.

ii) The sponsoring agencies must workout the Credit cover under the GTMSE scheme of the Govt. of India to facilitate smooth and hassle free finance for these self-employed/first generation entrepreneurs as they are not able to provide collateral security and third party guarantee to the bankers.

iii) The selection committee of PMEGP which gives approval for the projects should be conducted in a fixed time frame of three months, as the time factor in case of first generation entrepreneur plays a very critical factor for their success.

iv) The sponsoring agencies should make use of the electronic and print media for a better coverage and awareness of the PMEGP scheme. And those aspirants of self employment/entrepreneurship must be briefed well in advance about the various pros and cons of the scheme so that they make a choice among various schemes of the State and Central Govt. suitable for their projects.

v) The sponsoring agencies of the PMEGP should make batches of applicants on the basis of the type of the business activity for the EDP course, so that customized EDP's are offered to them.

vi) The bankers should provide the finance under this scheme as per the capital structure reflected in detailed project reports. Moreover the practice of phasing out the projected amount should be avoided as much as possible.

## Conclusion

Most of the respondents have opted for self employment/entrepreneurship as career option due to their own choice and is neither influenced by the schemes of the Government nor their failure to get a job in public sector. The PMEGP scheme plays an important role in providing credit flow to these aspirants who want to be self-employment and generate employment avenues for others too. The electronic and print media which is the most widespread and fast means of communication in globalised world is not effectively used for disseminating the information about the scheme by the line departments, but relying more upon the traditional channels of communication. The beneficiaries of the scheme are facing problems at the hands of the financial institutions which create unnecessary hurdles in releasing the finance for their projects and the standard approach in the financing the projects is not followed by them.

In most of the cases the sanctioning authority does not approve total proposed project costs to the prospective entrepreneurs. This reflects an arbitrary approach adopted by the sanctioning authorities in financing the projects. Such arbitrary approach towards the project financing put the beneficiaries in dilemma whether to carry on or abandon the project idea or search for other alternatives for financing the business idea. Moreover, it takes much more time to actually release the finance for the ventures under this scheme, as the selection committees do not process the projects in a time bound manner and bankers were usually found to be bit non-cooperative about the scheme. This whole process leads to unnecessary delay in the project startup which decreases the motivation & interest of the prospective entrepreneurs. The study further revealed in order to create viable and successful entrepreneurial ventures the EDP should be conducted before the prospective entrepreneurs finalize and formulate their projects.

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# SWARANJAYANTI GRAM SWAROZGAR YOJANA IN KASHMIR VALLEY- AN APPRAISAL

Imtiyaz-Ul-Haq*
Rashid Rasheed Wani**

## ABSTRACT

*The Swaranjayanti Gram Swarozgar Yojana( SGSY) was launched in April 1999, replaced the scheme like Integrated Rural Development Programme (IRDP), Development of Women and Children's in Rural Areas(DWACRA), Supply of Improved Tool Kits to Rural Artisans (S.I.T.R.A.), Million Wells Scheme (M.W.S.), Ganga Kalyan Yojana (G.K.Y), Training of Rural Youth for Self Employment (TRYSEM).It was an initiative launched by government of India to provide employment to poor people living in rural areas of a country. The funds for the scheme are being provided by central and state governments in the ratio of 75:25. The SGSY has a special focus on vulnerable groups among the rural people. Accordingly the SC/ST account for at least 50%, women 40%, and Disabled 3% of those assisted. The scheme is implemented in all the districts of Jammu and Kashmir more or less as per the guidelines of the scheme. In Kashmir division total number of 6183 SHGs were formed from 1999-2011. The Credit was disbursed in many Districts of Kashmir with varying proportions and very low amount was disbursed among Schedule caste. The commercial banks top in providing credit to the beneficiaries under SGSY. It is the secondary sector, which provides large employment to the beneficiaries under SGSY than the primary and tertiary sector.*

## Introduction

Poverty in India is wide spread with nation estimated to have a third of the world poor. According to a 2005 World Bank estimate 42% of India falls below the international poverty line of US$1.25 a day (PPP in nominal terms RS 21.6 a day in urban areas and Rs 14.3 in rural areas) as per exchange rate 1971. So poverty alleviation was the main concern for policy makers in formulation of five years plans. Different

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measures were taken for alleviation of poverty. Although these measures had some success, but still in India there is too much of poverty.

The J&K state is not free from this poverty problem .It was estimated 21.37 percent number of people living below poverty line(Digest of Economics and Statistics 2008-09). In order to tackle the problem of unemployment and poverty J&K Government has initiated a number of poverty alleviation Schemes to mitigate the rural poverty as well as the urban poverty which are being implemented in state with full financial and technical support of central Government. These schemes serve the dual purpose of poverty alleviation as well as employment generation.

Swaranjayanti Gram Swarozgar Yojana is one such programme, which were implemented for poverty alleviation and rural employment. It was an initiative launched by Government of India to provide employment to poor people living in rural areas of a country. The scheme was launched in April 1999, replaced the schemes like Integrated Rural Development Programme(IRDP), Development of Women and Children's in Rural Areas(DWACRA),Supply of Improved Tool Kits to Rural Artisans(SITRA),Million Wells Scheme(MWS),Gaga Kalyan Yojana(GKY) and Training of Rural Youth for Self Employment(TRYSEM).

The objective of Swaranjayanti Gram Swarozgar Yojana(SGSY) is to bring assisted poor families above poverty line by organizing them into self help groups(SHG) through the process of social mobilization ,their training and capacity building and provision of income generating assets. The self help group approach helps the poor to build their self confidence through community action. Group process and collective decision were to enable them in the identification and prioritization of their needs and resources. This process would ultimately lead to the strengthening and socio-economic empowerment of the rural poor as well as improve their collective bargaining power. The Swaranjayanti Gram Swarozgar Yojana is by design, meant to create wide spread income generating activities, through the empowering mechanism of self help groups, where group dynamics are expected to compensate for the basic weakness of the individual rural poor and present them as credit worthy and financially accountable units. The system of grading the self help groups (SHG) through a rigorous process is expected to separate the more vibrant of the self help groups(SHGs) and eventually give them a capital subsidy assistance, so that they undertake self employment oriented live hood opportunities.

The funds for the scheme are being provided by the centre and state government in the ratio of 75:25.The subsidy allowed under the Swaranjayanti Gram Swarozgar Yojana is 30 percent of the total project cost to a ceiling of rupees7500.In respect of

SC/STs and disabled persons however ,these will be 50 percent of the project cost to a maximum of rupees.10,000 respectively .For groups of swarozgaries(SHGs),the subsidy would be at 50 percent of the project, subject to a ceiling of rupees 1.25 lakhs or per capita subsidy of rupees 10,000 whichever is less. The Swaranjayanti Gram Swarozgar Yojana (SGSY) has special focus on the vulnerable groups among the rural people. Accordingly the Scheduled caste/ Scheduled Tribe account for at least 50 percent, women 40 percent and disabled 3 percent of those assisted.

The present study has been undertaken to study the performance of Swaranjayanti Gram Swarozgar Yojana in Kashmir Valley

## Observations and Inferences

The analysis revealed number of observations and inferences which are discussed as under:

1. **Financial Outlay Under Sgsy:** It was observed that on an average Rs800-900 lakhs were made available to the J&K state annually during 2001-07 for the implementation of SGSY. Although the state had released matching funds `for the implementation of the scheme during 2001-05, but the centre has released only 68 percent of the allocated funds to the state during 2001-05, which further dropped to 63 percent during 2005-07.During 2007-08, financial outlay under SGSY for the state was Rs13.53 crore, out of which 5.97 crore was allocated to Kashmir division accounting for 44.12percent.During 2008-09 financial outlay under SGSY was 16.27 crore, out of which 8.14 crores was allocated to Kashmir division accounting for 50.03 percent. In 2009-10, financial outlay for Kashmir division under SGSY was 10.28 crores. While in 2010-11, financial outlay for Kashmir Division under SGSY was 6.72 crores to the J&K state.

2. **Coverage of Beneficiaries Under Sgsy:** The main objective of the Swaranjayanti Gram Swarozgar Yojna is to bring the assisted poor families above the poverty line by ensuring appreciable sustained level of income over a period of time. This objective is to be achieved by organizing the rural poor into self help groups through the process of social mobilization, their training and capacity building and provision of income generating assets .Thus, the success of Swaranjayanti Gram Swarozgar Yojana (SGSY) mainly depends upon the formation of self help groups. The table-1 shows tha: in Kashmir Division during 1999-2011, the total number of 6183 self help groups were formed, out of which 4148 were women accounting for 67.08 percent. It is revealed from the table-1 that majority

of these groups were formed in the initial years of the implementation of SGSY, and the number of groups formed declined over the time. The total number of groups formed in the Kashmir division, around 58.48 percent have passed Grade I and only 23.07 percent have passed Grade II during reference period. From Kashmir division district Baramullah has the distinction of having registered the largest growth of SHGs accounting for 22.57 percent, while as district Kargil stands at the bottom with less than 2.0 percent. However, these SHGs in Kashmir division as a whole have fallen by half in period-II(2006-2011) compared to period-I(1999-2005).This decline was particularly prominent in case of Women Self Help Groups (WSHGs) registering a fall of more than 45.0 percent alone..This shows that in Kashmir Division less importance has been given to the formation of women self help groups, which is the point of concern. The table-2 shows that in Kashmir Division from 2006-2011, 17271 individual cases were assisted, out of which 5802 were women,1431 were scheduled caste/scheduled tribe and only 21 were disabled beneficiaries accounting 33percent,59 percent,8.28percent, and 0.12 percent respectively. It indicates that SGSY have not achieved success in Kashmir division as per guidelines. The scheme envisages 50 percent for SC/ST, Women 40 percent and the disabled 3 percent of those assisted which was not achieved in Kashmir division during reference period.

3. **Training of the Beneficiaries:** The table-3 presents information that in Kashmir division during 2006-2011, 19303 members of self help groups (SHGs) were trained, out of which 1029 members from scheduled Tribe and 15472 members were women accounting 5.33 percent and80.0 percent respectively. The table also shows that no member from scheduled caste was trained. Again it is the district Baramullah where highest numbers of beneficiaries were trained, accounting for 63.85 percent while as district Anantanag could not cover even one percent of beneficiaries in terms of providing training. It shows that in district Anantanag less importance were given to training component under SGSY. From the data contained in the same table and for same reference period it appears that as many as 8659 individual swarozgaries were trained, out of which 1664 were women,1176 swarozgaries were scheduled Tribe, 4 members were scheduled caste and only 7 members were disable. accounting 19.21 percent, 13.58 percent, 0.046 percent and 0.08 percent respectively. It shows that scheduled Caste and disable swarozgaries are totally ignored under component of training, which is very important element under SGSY

4. **Credit And Subsidy:** In Kashmir Division during 2006-2011, the total amount of rupees 7986.86 lakhs were disbursed among self help groups and individual swarozgaries out of which rupees 1037.43 lakhs were disbursed among SHGs and rupees 6949.41 lakhs were disbursed among the individual beneficiaries ( table-4). The district Baramullah accounts for 32.84 percent to the total credit disbursed in Kashmir division, which is relatively higher than the other districts of Kashmir division. In district Srinagar, Pulwama, Kargil, and Leh the credit was disbursed below the division average and in district Budgam, Baramullah, Kupwara, and Anantnag, credit was disbursed above the division average. It is very important to allocate more funds to the districts in which credit was disbursed below the division average. During period of reference the total amount of rupees 1947.76 lakhs were disbursed among the self help groups and individual beneficiaries as subsidy, out of which rupees 653.76 lakhs were disbursed among SHGs and rupees 1293.99 lakhs were disbursed among the individual beneficiaries. So for as the weaker sections are concerned, such as women, scheduled caste, scheduled tribe and disable,the information contained in table-5 shows that in Kashmir division during 2006-2011,the total amount of rupees2.00 lakhs were disbursed among the members of Schedule caste, out of which rupees 1.64 lakh were disbursed as loan and rupees 0.36 lakhs were disbursed as subsidy. Thus schedule caste account for 0.074 percent of the total credit disbursed among the members of weaker section under SGSY, which is very low amount for their upliftment. The total amount of credit disbursed among the members of scheduled Tribe was rupees 666.60 lakhs, out of which rupees 520.39 lakhs were disbursed as loan and rupees 146.21 lakhs were disbursed as subsidy. The scheduled Tribe accounting for about 25.0 percent to the total credit disbursed which is something better as compared to scheduled caste category. The total amount of rupees 1989.30 lakhs were disbursed to women section, out of which rupeess1426.38 lakhs were disbursed as loan and rupees 156.27 lakhs disbursed as subsidy accounting for almost 75.0 percent, while as the share of the credit extends to disable category accounts for less than half a percent.

The role of financial institutions in disbursing the credit is very vital to the success of any development programme .According to the information contained in table-6 total amount of rupees 7772.87 lakhs was disbursed through different financial institutions during 2006-2011 in Kashmir division under SGSY. An amount of rupees 4555.64 lakhs were disbursed through various commercial banks, rupees1944.17 lakhs disbursed through cooperative banks, rupees 772.02 lakhs through Regional Rural Banks, and only rupees 501.04 lakhs were disbursed through other small financial intuitions .It is evident that Commercials banks have taken lead in finance the credit to the SGSY scheme in Kashmir division by contributing to the extent of more than 58.0 percent of the total credit.

5. **Sector-Wise Coverage:** In Kashmir Division the percentage of beneficiaries assisted under primary sector has fallen from 60.14 percent to 47.86 percent in 2002-2003.The percentage of beneficiaries assisted under SGSY in secondary sector has from 27.69 percent in 1999-2000 to 38.34 percent in 2002-2003.The percentage beneficiaries assisted under tertiary sector has increased from 11.37 percent in 1999-2000 to 18.80 percent in 2002-2003.The table 7 presents information that in Kashmir division during 2006-2011, total number of 34078 beneficiaries were assisted under different sectors. The total number 8047 members assisted under primary sector constitute 23.61 percent, 21308 beneficiaries assisted under secondary sector constitute 62.52 percent, 4723 beneficiaries assisted under Tertiary sector constitutes 13.85 percent to the total number beneficiaries assisted under different sectors during period of reference. It shows that large number of the beneficiaries had got employment in secondary sector than primary and tertiary sector under SGSY. The primary and tertiary sector has almost been neglected under SGSY, although tertiary sector provides employment opportunity throughout the year. In order to attain a desirable rate of economic growth it is necessary that all the sectors of the economy are adequately developed.

## Conclusion

From the above observations and interferences we come to the conclusion that SGSY scheme is not in progressive mode in Kashmir Division, because the beneficiaries in all segments especially SHGs has declined over the period of time. The training facility was not made available to all beneficiaries, so it is very important to allocate more funds to training component under SGSY in Kashmir Division. The scheduled caste and disabled persons have totally been ignored, as very low amount was disbursed in those sections in Kashmir division. There is felt need to disburse more amount in those sections, so that they can reap the fruits of this scheme. The tertiary sector is lagging behind than secondary sector in providing employment to beneficiaries in Kashmir Division, it is very important to divert the attention of beneficiaries towards tertiary sector, as it provides employment opportunity throughout the year.

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## Inter- District Physical Progress of SHG s in Kashmir Division (1999-2011)

### Table1

| District | Periods | Total SHGs formed | Percentage change in formation of SHGs | Women Self Help Groups formed | Percentage Change in formation of WSHG | SHGs Passed Grade I | SHGs Passed Grade II |
|---|---|---|---|---|---|---|---|
| Srinagar | Period I | 300 | - | 218 | - | 216 | 67 |
| | Period II | 173 | -42.33% | 67 | -69.26% | 67 | 39 |
| | Total | 473 | - | 285 | - | 283 | 106 |
| Budgam | Period I | 529 | - | 473 | - | 216 | 67 |
| | Period II | 587 | 9.88% | 422 | -10.78% | 380 | 290 |
| | Total | 1116 | - | 895 | - | 596 | 357 |
| Baramulla | Period I | 822 | - | 714 | - | 464 | 75 |
| | Period II | 574 | -30.17% | 451 | -36.83% | 362 | 260 |
| | Total | 1396 | - | 1165 | - | 826 | 335 |
| Kupwara | Period I | 630 | - | 556 | - | 464 | 101 |
| | Period II | 288 | 54.28% | 164 | -70.50% | 173 | 52 |
| | Total | 918 | - | 720 | - | 637 | 153 |
| Pulwama | PeriodI | 492 | - | 231 | - | 247 | 22 |
| | Period II | 200 | -59.34% | 189 | -18.18% | 127 | 146 |
| | Total | 692 | - | 420 | - | 374 | 168 |
| Anantnag | Period I | 1089 | - | 268 | - | 216 | 67 |
| | Period II | 71 | -93.48% | 16 | -94% | 71 | 43 |
| | Total | 1160 | | 284 | - | 287 | 110 |
| Kargil | Period I | 39 | - | 32 | - | 34 | 0 |
| | Period II | 70 | 79.48% | 56 | 75% | 27 | 8 |
| | Total | 109 | - | 88 | - | 61 | 8 |
| Leh | Period I | 201 | - | 199 | - | 216 | 67 |
| | Period II | 118 | - 41.29% | 92 | - 53.76% | 120 | 123 |
| | Total | 319 | - | 291 | - | 336 | 190 |
| Kashmir Division | Period I | 4102 | - | 2691 | - | 2073 | 466 |
| | Period II | 2081 | -49.26% | 1457 | -45.85% | 1543 | 961 |
| | Total | 6183 | - | 4148 | - | 3616 | 1427 |

Period I Jan 1999 to Dec 2005 and Period II Jan 2006 to 2011

**Source. Compiled by the authors from the official data of the Directorate of Rural Development Kashmir**

## Inter- District Coverage of Individual Beneficiaries in Kashmir Division 2006-2011

### Table 2

| District | Total | Scheduled Caste | Scheduled Tribe | Women | Disabled |
|---|---|---|---|---|---|
| Srinagar | 1114 | | 111 | 157 | - |
| Budgam | 1511 | - | 2 | 722 | - |
| Baramulla | 5174 | - | 186 | 1767 | 18 |
| Kupwara | 2999 | 2 | 175 | 932 | 3 |
| Pulwama | 1503 | - | 76 | 811 | - |
| Anantnag | 3585 | - | 300 | 1186 | - |
| Kargil | 946 | - | 358 | 109 | - |
| Leh | 439 | - | 221 | 118 | - |
| Kashmir Division | 17271 | 2 | 1429 | 5802 | 21 |

**Source. Compiled by the authors from the official data of the Directorate of Rural Development Kashmir**

## Details of Training of Swarozgaries in Kashmir Division 2006- 2011

### Table 3

| NO of members of SHGs trained | | | | | | NO of Individual Swarozgaries Trained | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| District | Total | SC | ST | Women | Disabled | Total | SC | ST | Women | Disabled |
| Srinagar | 815 | - | - | 390 | - | 1020 | - | 27 | 553 | - |
| Budgam | 1950 | - | - | 1600 | - | 630 | - | - | 190 | - |
| Baramulla | 12325 | - | 158 | 11037 | - | 1702 | - | 142 | 136 | 3 |
| Kupwara | 863 | - | - | 639 | - | 2060 | 2 | 111 | 122 | 2 |
| Pulwama | 1457 | - | - | 845 | - | 1152 | - | 91 | 179 | - |
| Anantnag | 190 | - | - | 145 | - | 1259 | 2 | 98 | 357 | - |
| Kargil | 293 | - | 166 | 111 | - | 511 | - | 493 | 16 | 2 |
| Leh | 1410 | - | 705 | 705 | - | 325 | - | 214 | 111 | - |
| Kashmir Division | 19303 | - | 1029 | 15472 | - | 8659 | 4 | 1176 | 1664 | 7 |

**Source. Compiled by the authors from the official data of the Directorate of Rural Development Kashmir**

## Details of Credit and Subsidy Disbursed to SHGs and Individual Swarozgaries in Kashmir Division 2006-2011

### Table 4

| District | Credit Disbursed(in lakhs) | | | Subsidy Disbursed | | |
|---|---|---|---|---|---|---|
| | Total | SHGs | Individual Swarozgaries | Total | SHGs | Individual Swarozgaries |
| Srinagar | 480.54 | 53.85 | 429.69 | 138.35 | 52.20 | 86.15 |
| Budgam | 1035.01 | 396.55 | 638.46 | 339.05 | 221.20 | 117.84 |
| Baramulla | 2623.44 | 370.57 | 2252.87 | 600.97 | 221.58 | 379.39 |
| Kupwara | 1417.87 | 64.40 | 1353.47 | 286.30 | 58.04 | 228.26 |
| Pulwama | 567.81 | 59.570 | 508.22 | 141.65 | 36.33 | 105.32 |
| Anantnag | 1529.61 | 54.80 | 1474.81 | 340.16 | 37.89 | 302.27 |
| Kargil | 227.28 | 2.30 | 224.98 | 56.06 | 3.40 | 52.66 |
| Leh | 105.30 | 35.39 | 69.91 | 45.22 | 23.12 | 22.10 |
| Kashmir Division | 7986.86 | 1037.43 | 6949.41 | 1947.76 | 653.76 | 1293.99 |

**Source. Compiled by the authors from the official data of the Directorate of Rural Development Kashmir**

## Detail of subsidy and credit disbursed to weaker sections in Kashmir division 2006-2011

### Table 5

(in lakhs)

| District | Schedule caste | | | Schedule tribe | | | Women | | | Disabled | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Total | Credit | Subsidy | Total | Credit | Subsidy | Total | Credit | Subsidy | Total | Credit | Subsidy |
| Srinagar | - | - | - | 30.25 | 23.55 | 6.70 | 24.65 | 20.24 | 4.41 | - | - | - |
| Budgam | - | - | - | - | - | - | 563.45 | 398.70 | 164.75 | - | - | - |
| Baramula | - | - | - | 95.14 | 71.85 | 23.29 | 680.74 | 420.53 | 260.21 | 7.7 | 6.0 | 1.7 |
| Kupwara | 1.00 | 0.80 | 0.20 | 15.35 | 12.35 | 3.0 | 185.96 | 151.34 | 34.62 | 1.4 | 1.13 | 0.27 |
| Pulwama | - | - | - | 35.38 | 27.64 | 7.74 | 35.39 | 29.16 | 6.23 | - | - | - |
| Anantnag | 1.00 | 0.84 | 0.16 | 98.50 | 77.20 | 21.30 | 368.67 | 303.37 | 65.67 | 1.5 | 1.2 | 0.30 |
| Kargil | - | - | - | 283.34 | 227.28 | 56.06 | 63.46 | 51.86 | 11.6 | - | - | - |
| Leh | - | - | - | 108.64 | 80.52 | 28.12 | 66.98 | 51.18 | 15.80 | - | - | - |
| Kashmir Division | 2.00 | 1.64 | 0.36 | 666.60 | 520.39 | 146.21 | 1989.3 | 1426.38 | 563.27 | 10.6 | 8.33 | 2.27 |

**Source. Compiled by the authors from the official data of the Directorate of Rural Development Kashmir**

## Bank wise Credit Disbursed to Beneficiaries under SGSY in Kashmir Division

### Table 6

(Rs in lakhs)

| District | Commercial Banks | Cooperative Banks | Regional Rural Banks | Others | Total |
|---|---|---|---|---|---|
| Srinagar | 407.57 | 73.67 | 19.09 | - | 500.33 |
| Budgam | 640.18 | 297.55 | 125.25 | 32.03 | 1095.01 |
| Baramula | 1312.82 | 604.13 | 527.93 | - | 2444.88 |
| Kupwara | 351.49 | 465.18 | 52.68 | 448.51 | 1317.86 |
| Pulwama | 439.85 | 117.03 | - | - | 556.88 |
| Anantnag | 1101.38 | 360.66 | 47.07 | 20.50 | 1529.61 |
| Kargil | 201.28 | 24 | - | - | 225.28 |
| Leh | 101.07 | 1.95 | - | - | 103.02 |
| Kashmir Division | 4555.64 | 1944.17 | 772.02 | 501.04 | 7772.84 |

**Source. Compiled by the authors from the official data of the Directorate of Rural Development Kashmir.**

## Sector-wise Coverage of Beneficiaries under SGSY 2006-2011

### Table 7

| District | Primary sector | Secondary sector | Tertiary sector | Total |
|---|---|---|---|---|
| Srinagar | 306 | 836 | *262* | 1404 |
| Budgam | 983 | 6754 | - | 7737 |
| Baramula | 1749 | 8167 | 1913 | 11829 |
| Kupwara | 1604 | 1081 | 1262 | 3947 |
| Pulwama | 1858 | 1364 | - | 3242 |
| Anantnag | 1406 | 2221 | 691 | 4318 |
| Kargil | 30 | 50 | 490 | 570 |
| Leh | 91 | 835 | 105 | 1031 |
| Kashmir Division | 8047 | 21303 | 4723 | 34078 |

**Source. Compiled by the authors from the official data of the Directorate of Rural Development Kashmir**

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# LEARNING WATER GOVERNANCE FROM LEGAL HISTORY: CAN WATER LAW OF J&K BECOME MODEL FOR OTHER STATES IN INDIA?

**Mohammad Ayub Dar***

## ABSTRACT

*There are two sets of legal frameworks for the management of water resources in Kashmir Himalayas. The older sets of regulations treat water as an inexhaustible resource and focus more on supply of the water and regulation of water related activities. These sets of laws pay little heed to conservation of the water resources. There are, however, scattered provisions in these laws which, in order to protect public health, prohibit activities that contaminate the water. The other framework of laws which is comparatively of recent origin focuses on prevention of pollution and maintenance of the resource for human, agricultural production and other economic purposes.*

*An efficient legal framework for the management of water resources requires a thorough analysis of existing water codes in order to compliment, improve and reinforce the existing law by incorporating the vital principles of sustainability of the natural resources. The past practice of focusing on supply of water and regulation of water related economic activities has led to a lack of co-ordination between different agencies managing water resources in the state. The Water (Prevention and Control of Pollution) Act, 1974 has added one more official agency for prevention and control of some, and not all of the polluting activities. The Bio-non-degradable Materials (Management, Handling and Disposal) Act, 2007 creates yet another authority with power to prevent entry of bio-non-degradable materials into the water resources. The two legislations need huge infrastructure and manpower to achieve their objectives. The recently enacted Water Resources (Management and Regulation) Act, 2010 aims to consolidate the regulatory management mechanism but does not disturb the existing pollution prevention and regulation mechanism. This paper attempts to explore different legal dimensions of*

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*the two systems of laws relating to water resources in the state so as to highlight the problems that need to be addressed to achieve optimum pollution prevention and resource conservation benefits. The paper is divided into three parts. Part I gives an account of older laws operating in the state to regulate different aspects of the water resources. Part II deals with recent water resource related laws. Part III attempts to highlight those challenges and problems which these laws need to address for ensuring an efficient legal management mechanism of water resources in the state. Although the J&K Water Resources (Management and Regulation ) Act,2010 can be praised to be one of the suitable models that the state legislature has accomplished out of the pages of legal history related to water resources , its blindfolded adoption by other states is not advisable unless legal loopholes are plugged to achieve optimum objectives of quality governance.*

## Introduction

There are two sets of legal frameworks for the management of water resources in Kashmir Himalayas. The older sets of regulations treat water as an inexhaustible resource and focus more on supply of the water and regulation of water related activities. These sets of laws pay little heed to conservation of the water resources. There are, however, scattered provisions in these laws which, in order to protect public health, prohibit activities that contaminate the water. The other framework of laws which is comparatively of recent origin focuses on prevention of pollution and maintenance of the resource for human, agricultural production and other economic purposes.

An efficient legal framework for the management of water resources requires a thorough analysis of existing water codes in order to compliment, improve and reinforce the existing law by incorporating the vital principles of sustainability of the natural resources. The past practice of focusing on supply of water and regulation of water related economic activities has led to a lack of co-ordination between different agencies managing water resources in the state. The Water (Prevention and Control of Pollution) Act, 1974 has added one more official agency for prevention and control of some, and not all of the polluting activities. The Bio-non-degradable Materials (Management, Handling and Disposal) Act, 2007 creates yet another authority with power to prevent entry of bio-non-degradable materials into the water resources. The two legislations need huge infrastructure and manpower to achieve their objectives. The recently enacted Water Resources (Management and Regulation) Act, 2010 consolidates the regulatory management mechanism but does not disturb the existing pollution prevention and regulation mechanism. This paper attempts to explore different legal dimensions of the two systems of laws relating to water resources in the state so as to highlight the problems that need to be addressed to achieve optimum pollution prevention and resource conservation benefits. The paper is divided into three parts. Part I gives an account of older laws operating in the state to regulate different aspects of the water resources. Part II deals with recent water resource related laws. Part III attempts to highlight those problems which these laws need to address for ensuring an efficient legal management mechanism of water resources in the Kashmir Himalayas.

## Part- I

## Water Regulation in J&K: a historical Retrospect

### The Eminent Domain, Water Rights and the Prevention of Water pollution: the Canal and Drainage Act and the Easements Act

The Canal and Drainage Act, is one of the earliest legislations in the state providing for the management of water resources in the state. Under the Act the state Government, is entitled to use and control, for public purposes, the water of all rivers and streams flowing in natural channels, and of all lakes and other natural collections of still water. Applying the pervasive logic of eminent domain, the legislation without dealing with the ownership, entrusts the state with the right to use and control water. The Easements Act, 1882 in its section 7 while recognizing the right of the owner of an immovable properly to enjoy his property explains in illustration (j) (appended to Section 7) that this would include:-

'The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purpose and watering its cattle and sheep and the right of every such owner to use and consume the water for irrigating such land, and for the purpose of any manufactory situate thereon, provided that he does not thereby cause, material injury to other like owners'.

The two widely recognized theories of riparian rights are the natural flow theory and the reasonable use theory. Under the former theory each riparian proprietor of a water course is to have the body of water flow as it was to flow in nature, qualified only by the privilege of each to make limited use of the water. Under the later theory the primary or fundamental right of each riparian proprietor on a water course or lake is to be free from unreasonable use that causes harm to his own reasonable use of the water. The Easements Act also recognizes customary rights of the people and provides two rules for their recognition by long use or prescription (section 15) and by local custom (section 18). Again , however, the Act subjects all such rights to the overriding power of the government to regulate the collection, retention and distribution of the water of rivers and streams, flowing in natural channels, and of natural lakes and ponds, or of the water flowing , collected, retained or distributed in or by any channel.

The objective behind examining the legal frame work in the above direction lies in realizing that apart from pollution free water, the access to safe and drinking water is also a fundamental right. It is equally important to make it known to all that the people have a right to access to natural resources in their clean and unpolluted state and whosoever is responsible for environmental degradation can be saddled with the responsibility and costs for restitution of the degraded environmental resources to their original unpolluted state. This principle commonly known as 'polluter pays principle' demands that the financial costs of preventing or remedying the damage caused by the pollution should lie with the body which caused it.

In view of acute shortage of water facilities there is urgency to understand the legal basis for water rights. The demand for water for drinking, domestic use, and for industrial and agricultural purposes is rising. The competing claims over the scarce water resources are inevitable. In the face of increasing competition for access to water, the development of water rights regime has become important.

The potential in assertion of water rights has to be fully realized. Thus for example the farmer's need for a fixed quantum of water for survival needs can find a sure legal `footing in the form of assertion of the fundamental right to water. On the other hand, the invocation of this right could also help him make the concerned departments of the Government accountable for supply of a minimum amount of water to him.

The recent legislative water law reform in Jammu and Kashmir has classified the older laws into two types. Those that have been repealed under the new legislation but the rules and regulations framed there- under are partly in operation in one or the other way because the operational parts are not inconsistent with the system envisaged under the new law. These laws include:

1. The Water Mills (Jandar and Gharat ) Act, Samvat 1989;
2. The Kashmir Valley Embankment Act, Samvat 1992;
3. The Jammu and Kashmir Water Supply Act,1963 ,and
4. The Jammu and Kashmir Irrigation Act, 1978[1].

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[1] See the Jammu and Kashmir Water Resources(Regulation and Management) Act,2010,section 201 expressly repeals these Acts but those rules and regulations enacted there- under

The second type of laws include Acts that contain provisions for prevention and control of polluting activities or regulate varieties of economic, tourist ,trade, construction and other activities and their provisions are incidentally relevant to water resources and therefore have not been touched in the recent legislations .A brief description of said laws is given hereunder:-

## A) Acts Preventing and Controlling Polluting Activities

i. **Animal Contagious Diseases (Control) Act, 2006 (1949 A.D):** Under section 22 of the Animal Contagious Diseases (Control) Act, 2006 (1949 AD) no person shall place or cause or permit to be placed in any river, lake, canal or other water within such distance from the shore, as may be prescribed, any carcass or any part of the carcass of any animal (Animal Diseases Control Act, 1949) [2] which at the time of its death was infective or which was destroyed on account of its being infective or suspected to be infective. Section 28 makes contravention of section 22 as an Offence punishable on first conviction with imprisonment up to six months or fine up to Rs. 100 or with both and in the case of subsequent conviction with imprisonment which may go up to 6 months or fine up to Rs.500 or with both. Boats or vehicles used by common carrier for the transport of animals are mandated to be cleansed and disinfected at such periods in such manner as may be prescribed[3]. An inspector appointed under the Act is empowered to inspect a boat or vehicle and require its cleaning and disinfection. Veterinary surgeon appointed under the Act can, by order in writing require an owner, occupier or person in charge of any land, building or other place or of any boat or vehicle in which any infected animal has been kept to have such land building, place, boat or vehicle disinfected and the internal fittings thereof and other things found there in or near to be disinfected or destroyed in the manner prescribe in such order[4]. Failure to comply with the order of an inspector or veterinary surgeon under sec 27 and (VII) respectively and is punishable on first

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which are not inconsistent with the new Act are deemed to have been enacted under the Act unless prospectively repealed or modified by the Government or the Authority created under the Act.

[2] Animal Diseases (Control) Act, 1949, section 3 (a) defines animal as 'any domesticated animal or bird, or any animal or bird kept in confinement'.

[3] Id. section 16(i).

[4] Id. section 17.

conviction with fine up to Rupees 100 and with fine up to Rupees 500 for the second or subsequent conviction[5].

ii. **The Cattle Trespass Act,1920:** Section 11 of the Cattle Trespass Act,1920 imposes a duty upon persons in charge of public roads, pleasure grounds, plantation, canals, drainage- works, embankments and the like, and the officers of the police to seize or cause to be seized any cattle doing damage to such roads, grounds, plantations, canals, drainage works, embankment and the like or the sides or slopes of such roads, canals, drainage works or embankment works or found thereon and send them within 24 hours to the nearest pound, where pound- keeper can levy fine in accordance with the prescribed scale[6]. Powers and functions exercised by the Government or the Deputy Inspector General of police under the Act can be transferred to any local authority who can also credit to their local fund any surplus accruing under the Act.[7]

iii. **The Wildlife (Protection) Act, 1978 as amended in 2002:** The Wildlife( Protection )Act,1978 defines land as including canals, creeks and other water channels, reservoirs, rivers, streams and lakes, whether artificial or natural and also includes boulders and rocks[8].Wildlife under the Act means the entire native uncultivated flora and fauna[9] while as habitat includes land ,water or vegetation which is the natural home of any wild animal[10].Section 18 imposes restrictions on hunting of wild animals by any means on water or land. Any area with adequate ecological, faunal, floral or geomorphologic significance can be declared as a Sanctuary, National Park, Game Reserve or a Closed Area Sanctuary for the purpose of protecting, propagating and developing wildlife or its environment[11].Once an area is declared and notified by the State Government as Sanctuary etc, the Wildlife Department is invested with wide powers to regulate or prevent trade or commerce in wild animals and prevention and detection of offences in such area so as to achieve the object of protecting and developing the wildlife and its environment[12] .

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[5] Id. section 27.

[6] The Cattle Trespass Act, 1920, section12.

[7] Id. section 33.

[8] The Wildlife( Protection )Act,1978,section 2(13).

[9] Id. section 2(34).

[10] Id. section 2(13),see also section 2(1 )where wild animal is defined to include 'all forms of animal life from the protozoan to the most evolved; amphibians, birds, mammals and reptiles and their young ones; and in the case of amphibians, birds and reptiles, their eggs'.

[11] Id. sections 17, 35-37.

iv. **The Municipal Act, 2000 A.D:** The Municipal Act, 2000 is an updated piece of legislation which has multiple numbers of provisions that can help the cause of water resource protection in many ways. The Act provides for prevention of soil erosion and hillside safety by prohibiting felling of trees within a municipality except under a permit from the prescribed authority[13].The fee for such permission is fixed as Rupees 50.Similarly depositing or throwing of earth, refuse, rubbish or offensive matter of any kind into any irrigation channel or public sewer or public drain or into any drain communicating with any irrigation channel is punishable with fine ranging from rupees 100 to rupees 1000[14].The Municipality can, by notice, require removal of nuisance arising from tanks and the lake[15].Suitable bathing and washing places may be set apart for men and women ,animals or clothes. To avoid fouling of water at public places, it may also provide separate washing points for articles of clothing, bedding etc exposed to any infection[16].The Municipality has power to give consent, with or without conditions for the establishment of workshops and factories with the municipal area[17].It can regulate certain offensive and dangerous trades and may withhold licenses if the business would be a cause of annoyance, offence or danger to persons, or that an area should be kept clear of the establishment of such business[18].

## B) Acts Regulating Economic Activities

v. **The Jammu and Kashmir Registration of Tourist Trade Act,1978:** The Jammu and Kashmir Registration of Tourist Trade Act,1978 that repeals the J&K Registration of Tourist Trade Act,1962 is a legislation that provides for the registration of persons dealing with tourists in the state. Persons intending to carry on business of a dealer, a tourist agent, a guide or an excursion agent in a tourist area are required to seek a certificate of registration under the Act from the Department of Tourism. Persons can be blacklisted for malpractices and are also liable to prosecution for the offences committed under the Act. Likewise persons operating or intending to operate hotels in a tourist area have to obtain a certificate of registration and may be blacklisted for malpractices .Every hotel keeper is bound to display at some conspicuous place of the hotel such information as may be prescribed. A hotel under the Act means any premises or part of premises including a house-boat, restaurant, dhaba, bar or a tent where lodging with or without board or any kind of eatables or beverages is provided for a monetary consideration. Certificates of registration can be refused or names removed from the respective registers where the prescribed authority finds the concerned person inter alia as having been convicted of any offence under Chapters XIII and XVII of the Rambir Penal Code or under any of the provisions of the Act or of any offence punishable under any law providing for the prevention of hoarding, smuggling or profiteering or adulteration of food or drugs or corruption or having been blacklisted. There is enough scope for reform of the law here and include commission of offences under the environmental laws as a ground for refusal of registration or removal of name from the register. The Act provides for publication of the names and addresses of persons and hotels whose names have been removed from the register and who have been refused registration under the Act. Such publication can be made in the Government Gazette as well or in such other manner as is deemed fit. Government is empowered to apply all or any of the provisions of the Act with such exceptions, adaptations or modifications as may be considered necessary to persons doing the business in a tourist area or letting or plying for hire boats, bathing-boats, automobile vehicles, tongas ,dandies ,ponies or to such other persons as may be specified in a notification .A boat under the Act has been defined to include a houseboat, donga-boat, shikara, motor boat, motor- launch, paddle- boat, sailing- boat, canoc and bathing boat. The Act defines certain other terms though those terms have not been fully utilized in the later parts of the Act. For example a mooring site has been defined to mean embankment of a river or a lake specially earmarked for purposes of mooring the boats. Likewise mooring site means a site where a set of boats may be allowed to moor. The Registration of Tourist Trade Rules, 1979, however, provide a criteria for classification of houseboats and donga boats according to the type of facilities to be provided to the tourists in such boats.

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[12] Id, Chapters V, VI, sections 38-61.

[13] The Municipal Act, 2000, section 221, felling or abetting to fell a tree without permission is punishable with imprisonment upto three months or fine upto rupees 1000 or both.

[14] Id. section 160.

[15] Id. section 136.

[16] Id. section 110.

[17] Id. sections126.

[18] Id. Sections 125.

vi. **Camping and Mooring Sites Act, 2004 (1947 A.D.):** The Act provides for the regulation and control of camping and mooring sites in the camping grounds and mooring ghats outside the municipal limits of Srinagar-Kashmir[19] . The Act extends to the notified areas of Phalgam, to the villages of Nasim Bagh, Shadipur, Ganderbal, Sonemarg, Achabal and Kokarnag and the mooring sites along the Ningli Plantation. The Government has power to direct all or any part of the Act to extend to any other place in the Kashmir province[20]. The Act defines a mooring site as a site where a set of house -boats may be allowed to moor while as a camping site means a site in a camping ground (any area which has been specified for camping purposes) demarcated for pitching of tents[21] .

Section 3 imposes a prohibition on occupying any camping or mooring site except under a permit granted in the prescribed form. The permit along with the receipt for money shall always be kept available for inspection at all reasonable hours by persons occupying mooring or camping sites[22]. Power has been conferred upon the Government to provide for the method of allotment of the camping and mooring sites, fix the area of sites, prescribe the conditions and rates of rent subject to which allotment of sites can be made, and determine the manner of pitching tents or mooring boats. Contravention of the provisions of the Act or of the rules is punishable with fine up to Rs. 500 by a magistrate and for continued contravention after conviction to a fine of Rs. 50 for each day of contravention. Officials acting bonafidely under the Act are immune from civil or criminal prosecution[23].

vii. **FERRY BOATS Control Act, 1971:** The J&K Ferry Boats Control Act, 1971 providing for control on plying of ferry boats in the state applies to water courses which mean a river, canal, stream and other channel or collection of water as the Government may by notification declare to be a water course for purposes of the[24]. A ferry boat under the Act includes Beri, Kishti, Machwa, Raft, skews, Shikara or steam or Motor Launch or any other device used for transporting persons, animals or goods across a water course[25]. The Government pursuant to the power vested in it under section 3 of the Act has issued the Ferries and Ferry Boats Control Order, 1992 (Revenue Department vide SRO- 292 of 1992) [26] to regulate the operation of ferry boats in the state. Ferry boats over a water course can be operated only under a permit which is renewable[27]. Ferry boats are to be registered before the Assistant Commissioner (Revenue) or Sub-Divisional Magistrate of the concerned area of the water course[28]. While granting permits for operating ferry boats the competent authority is to keep inter alia the interests of the public generally in view[29]. Although the Act is silent about the responsibility of the operators of ferry boats in respect of the environment in general and protection of the waters and the acqua-life therein in particular, the above provision can be used as a mechanism of control by incorporating conditions in the permits and licenses issued by the authorities. Further ferry boats need to be expressly included within the Rules relating to handling and disposal of biodegradable and non-biodegradable materials in the natural waters including especially the lakes. The Ferry Boats Control Act, however, confers powers upon the Government to regulate, by a notification, the timing of the operation of ferry boats over a water course, transport of corpses or persons suffering from any infections or contagious disease or goods likely to cause discomfort, injury or harm to passengers or animals. Above all, the power to regulate the conduct of passengers in such ferry boats, the carriage and exhibition of lights by such ferry boats and prohibiting the operation of any ferry boat or any class of such ferry boats which the Government deems unfit or unworthy for operation either generally or over a particular water course are such regulatory aspects of section 3 of the Act which can be suitably utilized for the protection and preservation of the lakes and waterways in the state where such ferryboats operate.

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[19] Camping and Mooring Sites Act, 1947, the preamble.

[20] Id. section 1 (ii) (b).

[21] Id. section 2 (a) (b) and(c).

[22] Id. section 4.

[23] Id. sections 5, 6 and 7.

[24] The Ferry Boats control Act, 1971, section 2 (c).

viii. **The J&K State Fisheries Act, 1960 (1903A.D.):** The J&K State Fisheries Act, 1960 (1903A.D. ) has put an end to the system of forming out the right of fishing known as Mahal-i-Mahigiri that was in vogue in the Kashmir division prior to the passage of the Act[30]. The Act defines water as including all rivers, streams and lakes, all ponds belonging to the state and all tanks constructed by or under the authority of the state[31]. The Act classifies water in the state as sanctuaries, trout waters, reserved waters and protected waters[32]. The Government enjoys the power to prohibit the capture of fish by any of the recognized modes of fishing absolutely or subject to certain specified conditions, within certain water or waters[33]. Fishing in Sanctuaries is prohibited and a person found violating the prohibitions is liable to imprisonment up to 2 months or with fine up to Rs.100 or with both[34] .In trout, reserved or protected waters fishing, however, is permissible under a license[35]. Use of dynamite or other explosive substance in water with intent to catch or destroy any fish or putting any poison, lime or other noxious material into any water with the above intention or erection of any fixed engine or weir on the bank of, or in any water for the said purpose or use of any instrument or net other than those allowed under the law, or night fishing in any trout or reserved water and possession of nets by persons other than a license holder is an offence[36] punishable with simple or rigorous imprisonment up to one month or fine up to Rs. 50 or with both[37]. Attempt to commit any of the above acts or aid or abet the commission thereof is equally punishable with the same quantum of punishment as for actual commission of the act[38] and for continuing to commit an offence after having been warned to desist or after being convicted an enhanced punishment is prescribed which in certain cases may go up to 6 months imprisonment or fine up to Rs. 500 or with both[39]. Besides, confiscation of the articles used in capturing the fish as well as the fish captured can be part of the punishment[40].

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[25] Id.section-2 (b); section 2(a) defines a ferry as a place at which persons, animals or goods are transported across a water course by means of a ferry boat.

[26] Issued by Revenue Department vide SRO- 292 dated, 15th December 1992.

[27] Id. Rule 3.

[28] Id. Rule 10 and Rule 2 (f).

[29] Id. Rule 16 (1) (a).

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[30] J&K Fisheries Act,1903,section 3.

[31] Id. section 4.

[32] Id. see also section 5(1) empowering the Government to declare the localities which shall be treated as sanctuaries, Trout waters, reserved waters or protected waters respectively.

[33] Id. section 5(2).

[34] Id. section 6.

[35] Id. section 7(a).

[36] Id. section (7) (b), (c), (d), and (e).

[37] Id. section 7(j).

[38] Id .section (i), (j).

Under the Rules41 issued by the Government under section 17 (g) of the Act[41] floating of all timber [42] and fuel in trout waters during the month of August to end of April , washing of walnuts in or allowing of water from washed walnuts to drain into 'trout waters' is prohibited (Fisheries Rules, 1939) [43]. Similarly extraction of Hakraza, waternuts, aquatic plants, sand grave of stones is prohibited during the spawning season of fish in reserved and protected waters from 15th March to 15th July and in trout waters from November to February except with the permission in writing of the controlling officer in charge Fisheries[44].

ix. **The J&K Water- Nuts (Singhara) Rules, 2007 (1950):** The J&K Water- nuts (Singhara) Rules, 2007 (1950A.D.)have been framed by the Government in exercise of the powers conferred upon it under section 137 of the Land Revenue Act, 1996 smvt[45]. The Rules have initially on their publication been extended to the Wular Lake but the Government has been empowered to extend their operation to any other area[46]. Water-nuts[47] from any land belonging to the

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[39] Id. section 9.

[40] Id .Section 8.

[41] See Notification 9, Annexure to order No. 606-c of 939 dated 3rd July, 1939.

[42] Under the River Rules, 1965 (Samvet) timber can be put in transit by water of a river (which includes, streams, canals, creeks and other channels, natural or artificial) subject to permission which a Forest Officer in charge of the Division to which the control of the river pertains. Rafting of timber without a pass is prohibited ( punishable with imprisonment up to six months or with fine up to five hundred rupees or with both, the offence is ,however , made compoundable), scales of rafting fee are not to be levied on timber rafted by the public Departments of the J&K Government. See in this behalf Forest Law Manual Vol. I (JK Forest Department Publication) p.p.84-94 (Vol. II).

[43] Fisheries Rules, Rule (a) (b) and (c); the Chief Conservator of forests may by notification, for a period not exceeding a fortnight, permit the clearing of trout streams of timber and firewood stranded in them, see Rule (e) Id.

[44] Id. Rule (d).

[45] The J&K Water Nuts (*Singhara*) Ruls 2007, Cabinet order No 740-C-of 1950 published in Government Gazette dated 5th *Sawan*, 2007.

[46] Id. Rule 1 (2).

[47] Water- nut has been defined to mean water nuts (*singhara*) green or otherwise growing in water, see id. Rule 2(i), and see also Rule 3, 4 and 5.

Government, whether included within or without any estate, can be collected only under a license by any person who tenders the requisite fee and application to the Thesildar having jurisdiction in the place where from collection is to be made. License can be issued for fixed periods and can be extended for further time within which the collection has to be completed. A nominal fee is charged and the rates vary according to the length of the period for which collection is to be made. However, water-nuts once collected have to be removed within the periods specified in the license including any period of extension granted or are else liable to be forfeited to the Government and subject to disposal by sale or otherwise at the hands of Assistant Collector First class of the area. Collection of water- nuts by any person without a license or transfer of license to some other person though not prohibited yet such persons shall be liable to pay double the amount of license fee otherwise payable[48].

## C) Acts Envisaging Development And Controlling Encroachments And Constructions

**x. Development Act, 1970 and the establishment of LAWDA:** Given the enormous task of protecting and preserving the lakes, in particular the Dal, not only for the present generation but also for the posterity, the state Government in 1997 established the J&K Lakes and Waterways Development Authority under the Development Act 1970[49].The State Development Act, 1970 has been modeled on the Delhi Development Act. The legislation has an inherent weakness of lacking a legal design for development of lakes and waterways. Despite the fact that the Development Act has been used as an instrument to create the LAWDA to carry out the development activities directly, a number of other departments, authorities and bodies continue to exercise powers in respect of lakes and waterways in the state especially the Dal. These Departments include:-

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[48] Id. Rule 7(2).

[49] See SRO 109 of 1997, dated 27-03-1997, Annexure A to the SRO fixes the territorial boundaries of the LAWDA.The State Government has constituted the Wular Development Authority, comprising of officers from Forest, Irrigation and Flood Control Departments of the State; the State Tourism Department also has established the Wular and Manasbal Development Authority for development of tourism infrastructure and beautification around the lakes. The Wular and seven other lakes of the state have been brought under the National Wetland Conservation (NWC), see Greater Kashmir, dated15-01-2010 at p.p1 and 10.

1. Tourism Department
2. Forest Department
3. Soil Conservation Department.
4. Wildlife Department
5. Department of Fisheries
6. Department of Environment and Remote Sensing.
7. Department of Irrigation
8. Urban Environmental Engineering Department.
9. Public Health Engineering Department
10. Department of Parks and Gardens.
11. Municipal Corporation, Srinagar.
12. State Pollution Control Board.

A wide variety of legislations have a direct or indirect bearing upon the lakes and waterways in the state, though powers there-under remain scattered in the hands of different authorities and departments other than the LAWDA.

xi. **Land Revenue Act, 1996(1939A.D.):** Section 133-B of the Act was introduced in the Act by the Land Revenue (Amendment) Act, 1971(Act vi of 1971) along with section 133-C, 133D, 133E, 133-F and 133-G.Prior to this amendment land within section 3(2) was defined to include inter alia areas covered by or fields floating over water. Encroachments or cultivation of a lake area could be prevented by a Revenue officer duly empowered in this behalf either of his own motion or on the application of any person interested (The Land Revenue Act, 1939)[50] .The person encroaching or cultivating such area could be ejected without paying any compensation for crops or improvements. Such person could also be forbidden to repeat the encroachment, and could be fined for contravention of an order issued against him[51].

After its incorporation in the Act Section 133-B is directly applicable to lakes in Kashmir province which include Gagribal Lake, Dal lake, Nagin Lake, Anchor Lake, Manasbal Lake, Hokarsar Lake, Haigam Rakh and such other lakes as may be notified by the Government from time to time and every such lake is to comprise of such areas , water, water fields and floating fields as the government may, by general order specify in respect of each lake[52]. The section prohibits converting any water-surface, water field or floating field into land by filling or by any other process in any of the above said lakes without a written permission from the State Government. Likewise no person can without prior permission fill with earth, stones, rubble or any other matter, or fence or enclose in any manner what so ever, any water, for creating a water field or floating field or expanding the area of any authorized Water field or a floating field. It is prohibited to use any water surface, water field or floating field for mooring a floating field (Radh) thereon within such limits as may be specified[53]. Persons contravening these prohibitions in section 133-B can be asked by the collector or an officer not below the rank of Assistant Collector of the First Class as he may authorize, by notice in writing to remove the contravention and restore the land or water surface or water field or floating field , as the case may be, to its original condition by a particular date and on failure the Collector or such officer can after duly informing the person remove or caused to be removed the contravention and may, in doing so ,use such force as may be necessary[54]. Besides the above action, a person contravening section 133-B is liable to a fine of up to Rs.5000 with further fine of Rs. 500 for each day till contravention is removed[55]. Persons aggrieved by an order passed under section 133-C or D can prefer an appeal before the Divisional Commissioner within 30 days of the order who may stay the proceeding below[56]. However, action taken by a Collector, Assistant Collector or the Divisional Commissioner under the above provision cannot be called in question in any court. Courts are barred to entertain any suit or proceedings or grant any injunction with respect to any action or thing or any matter for which a proceeding has been taken under the said provisions[57].

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[50] The Land Revenue Act, 1939, section133 (2).

[51] Id. section 133(4-6).

[52] Id. section 133-B 'Explanation'.

xii. **The J&K Public Premises (Eviction of Unauthorized Occupants) Act,1988:** The Act provides for eviction of unauthorized occupants from public premises and extends to the whole of the state. Section 2 (d) defines 'public premises' as including, amongst others, any premises belonging to a Development

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[53] Id.

[54] Id. section 133-C (1).

[55] Id. section 133-D.

[56] Id. section 133-F.

[57] Id. section 133-G.

Authority(e.g. The Lakes and Waterways Development Authority) constituted under the J&K Development Act, 1970, whether such premises are in the possession of or leased out by the said authority. Premises under section 2 (c) means any land or any building or part of a building .Section 2 (g) defines unauthorized occupation in relation to any public premises as the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority ( whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever .Eviction of unauthorized occupants of public premises is to be secured through Estates Officers to be appointed by the Government by means of a notification in the Government Gazette. Gazetted Officers of Government, or officers of equallent rank of the statutory authorities can be appointed as Estates Officers, however Estates Officers from statutory authorities can exercise powers in respect of only the public premises within the control of respective statutory authorities[58]. In each appointment the Government, is also to define the local limits or the categories of public premises within which the Estates Officer is to exercise the powers under the Act.[59]

The Estates Officer is to serve a show cause notice in the prescribed manner upon a person who in his opinion is in unauthorized occupation of any public premises. If after hearing the person and weighing the evidence, the Estates Officer is satisfied that the public premises are in unauthorized occupation, he shall make an order of eviction for reasons to be recorded and specify the date by which the premises shall be vacated. Non-compliance with the order of eviction renders the occupant liable to be evicted by the Estates Officer or by any other person authorized by him with use of such force as may be necessary in this behalf[60]. Section 6 empowers the Estates Officer to remove or cause to be removed unauthorized construction etc by following the procedure laid down in section 5 and recover the cost of such removal as an arrear of land revenue. Section 7 empowers demolition of construction made by persons in occupation of public premises under an authority (whether by way of grant or any other mode of transfer) when such construction is either in contravention or not authorized by such authority. However before such order is made, a notice of not less than 5 days is to be served upon the person by the Estates Officer so as to afford him a reasonable opportunity of showing reason against the making of such an order .Section 8 confers power to seal unauthorized construction and section 9 provides for disposal of property left on public premises by unauthorized occupants. Damage charges together with simple interest can also be levied upon unauthorized occupants under section10. With a view to facilitate smooth conduct of enquiries section 11 entrusts an Estates Officer with the powers of a civil court in respect of summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of documents and any other matter as may be prescribed. Provision for an expeditious appeal against an order of an Estates Officer is found in section 12.The District Judge of the District or other judicial officer with not less than 10 years standing designated by the said District Judge is the Appellate Authority and a period of 12 days generally is the period of limitation prescribed for preferring of appeals. However, on show of sufficient cause, appeal can be filed beyond the prescribed period. Order of an Estates Officer and of the Appellate Authority, save in cases expressly provided in the Act, are final and cannot be called in question in any original suit, application or execution proceedings and no injunction can be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act[61] .

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[58] The J&K Public Premises (Eviction of Unauthorized Occupants) Act,1988, section 3.

[59] Id. section 3(b).

[60] Id. section 5.

Persons unlawfully occupying any public premises are liable to imprisonment for a term which may extend to 6 months or with fine up to Rs. 5000 or both. Those who, however, continue to occupy, after lawful occupation by virtue of an authority has eased to be valid, shall not be guilty of such offence. Persons once evicted and reoccupying the public premises without authority are liable to punishment up to one year or fine up to Rs.5000 or both[62]. Under section15 offences are cognizable for purposes of Cr.P.C and an officer in relation to the public premises belonging to the Development Authority as may be appointed by the Government, shall exercise powers as are specified under section 15 of the Act in respect of such offences. Courts are barred from entertaining any suit or proceedings in respect of eviction matters, the removal or demolition of structures ordered by an Estates Officer under the Act[63]. Section 20 confers an overriding effect to the Act in respect of matters which are dealt under the other Acts in a contrary manner.

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[61] Id. section 13.

[62] Id. section 14.

[63] Id. section 19.

xiii. **The J&K Control of Building Operations Act 1988 as amended by the J& K Control of Building Operations Act 1997:** The Act consolidates the law relating to control of building operations in the state and extends in its operations to the whole of the state. It constitutes Building Operations Control Authorities for a local area, Municipal area, town area, notified area or an area notified under the J&K Sate Town Planning Act, 1963. A local area is defined as any area declared to be as such under sub-section (1) of section 3 of the J&K Development Act, 1970. The LAWDA being a creation under the Development Act with its local area having been declared under sub- section 1 of section 3 of the said Act, therefore, a separate Building Operations Control Authority under the chairmanship of its Vice- Chairman is envisaged for the area of the Dal Lake (The J&K Control of Building Operations Act, 1988)[64] .The Act of 1988 defines various terms like boat, building, building operation, engineering operation erection or re-erection of a building and development so as to achieve the object of controlling various such activities through the envisaged controlling authorities in various areas.

Section 4 prohibits undertaking or carrying out the development of any site in any Municipal area, local area , town area, notified area or area notified under the Jammu and Kashmir State Town Planning Act, 1963 without seeking prior permission of the Authority concerned . Similarly such previous permission in writing from the concerned authority is made mandatory for erection or re-erection of any building or making or extending any excavation or laying out any means of access to a road in such an area. Applications for such permissions cannot be entertained by the concerned authority unless it is accompanied with a plan duly signed and bearing the seal of a Registered Architect or a Draftsman registered with the concerned authority.

## Floating Gardens and the law

In addition to the Land Revenue Act, 1939 the J&K Agrarian Reforms Act, 1976 also deals with the concept of floating gardens. The Agrarian Reforms Act has included areas covered by or fields floating over water within the definition of land, making thereby such areas amenable to the provisions of the Act[65]. However, land reserved by the Government for any public purpose is kept immune from the operation of the Act except application of section 38 of the Act[66]. Likewise land owned or held by local bodies is also omitted and kept fully immune from the provisions of the Act[67]. The J& K Lands (Vesting of Ownership to the Occupants) Act, 2001 provides for vesting of ownership rights to occupants of state land for purposes of generating funds to finance development projects in the state (the preamble to the Act).The Act in its section 3 specifically excludes state land covered by fields floating over water, and Kohl (irrigation channel). The funds raised under the Act are to be utilized by the Government for the overall development of the state and its people in areas like education, health, roads, public health engineering, power, irrigation and flood control or any other sector as may be deemed necessary by the high power committee constituted under Rule 3 of the J&K Development Fund Rules, 2007[68].

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[64] The J&K Control of Building Operations Act 1988 as amended by the J& K Control of Building Operations Act 1997, section 3(2), the other members of the said Building Authority are, Chief Town Planner, Town Planning Organization , District Superintending Engineer R&B, Executive Officer Town/ Notified Area Committee or the Municipality, Assistant Commissioner (Revenue) and Chief Executive Officer of the Building Operation Authority as the Member Secretary.

## Part II

## The New Approaches to Water and Water Resource Governance: Targeting widening challenges of Pollution prevention, maintenance, restoration and conservation

### i. The Water (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, 1986.

The Water (Prevention and Control of Pollution) Act, 1974[hereafter referred to as the Water Act, 1974] establishes a State Pollution Control Board as a nodal agency for effective implementation of the scheme envisaged under the Act for the prevention and control of water pollution and the maintenance of the wholesomeness of water (The Water (Prevention and Control of Pollution) Act, 1974)[69]. The Board is to plan a comprehensive programme for the prevention, control or abatement of pollution of streams[70] and wells in the state and to secure the execution thereof as well as advise the State Government on any matter concerning prevention, control or abatement of water pollution[71].The State Board is to work subject to the directions of the State Government and also in tandem with the Central Pollution Control Board which is itself subject to the overall control of the Central Government[72]. Section 24 of the Act prohibits intentional use of streams or wells for disposal of any 'poisonous, noxious or polluting matter[73]. Similarly no person can knowingly cause or permit to enter into any stream any other matter which may either directly or in combination with similar other matters impede the proper flow of the water of the stream and which may substantially aggravate the pollution due to other causes or of its consequences[74] .A prior consent from the state Board is required to establish any industry, operation or process, or any treatment and disposal system or an extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land; bring into use any new or altered outlets for the discharge of sewage or begin to make any new discharge of sewage[75].

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[65] J&K agrarian Reforms Act, 1976,section 2 (9) (b).

[66] Id. section 3 (k).

[67] Id. section 3 (e).

[68] See the J&K Development Fund Rules, 2007, Rule 9, Rules were published vide SRO No. 395 dated 21st November, 2007.

[69] The Water (Prevention and Control of Pollution) Act, 1974, section 4.

The Environment (Protection)Act,1986 defines environment in a comprehensive way as including water, air and land and the interrelationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property[76]. The words 'environmental pollutant' and 'pollution' under the Act denote any solid, liquid or gaseous substance present in the environment in such concentration as may be, or tend to be, injurious to environment[77].Extensive powers have been conferred upon the Central Government for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution which may be delegated under section 3 (3) and section 4 upon different authorities and officers specially constituted or designated under the Act. Persons carrying on any industry, operation or process cannot discharge or emit any environmental pollutant in excess of the standards prescribed under different Schedules of the Environment (Protection )Rules,1986.In the state of Jammu and Kashmir the State Pollution Control Board has been delegated with various powers including the power to give directions and order closure ,prohibition or regulation of any industry, operation or processor stoppage or regulation of the supply of electricity or water or any other service. The State PCB, therefore, can directly intervene to protect and improve the quality of the lakes and take steps for the prevention, control or abatement of any of the environmental pollutants.

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[70] Id. under section 2(j) a stream includes river, water course (whether flowing or for the time being dry), inland water (whether natural or artificial), subterranean waters, sea or tidal waters to the extent or point as specified by the concerned state Government.

[71] Id. section 17(1) (a) and (b).

[72] Id. section 18.

[73] The words 'poisonous, noxious or polluting matter' are said to be emotive rather than scientific and need to be approached with great caution, see Howarth, William : 'Poisonous, Noxious or Polluting': Contrasting Approaches to Environmental Regulation', Modern Law Review ,Vol.56 (1993) pp.171-87 at 181.

[74] Id. the Water Act,1974, section24(1).

[75] Id. section 25.

[76] The Environment (Protection) Act, 1986, section 2 (a).

[77] Id. section 2(b) and 2(c).

### ii. The Jammu and Kashmir Non-Biodegradable Material (Management, Handling and Disposal)Act 2007

The Jammu and Kashmir Non-Biodegradable Material (Management, Handling and Disposal) Act 2007 is a recent state legislation to prohibit and regulate handling and disposal of non-biodegradable material in the state and the matters connected therewith[78].Section 2(d) defines Non-biodegradable material as those materials which cannot be decomposed or degraded by action of microorganisms, sunlight or other natural actions and includes goods made or manufactured from polythene, nylon or other plastic substances specified in the schedule[79] of the Act, and also includes non-biodegradable waste and garbage. The Act empowers the government to appoint/ constitute a prescribed authority to excises the powers and perform the functions under the Act. The government can confer the powers of such authority on any existing agency working in the field of pollution abatement[80]. Accordingly the State Pollution Control Board has been conferred with the powers of prescribed authority under the Act. The Government after consulting the prescribed authority can declare non-biodegradable material control areas. Use of Non- biodegradable materials of any kind may be banned, prohibited or restricted in such declared area if its use is likely to result in environment, health or other problems[81].

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[78] The Jammu and Kashmir Non-Biodegradable Material (Management, Handling and Disposal) Act, 2007,the Preamble.

[79] Id. The schedule lists the following sixteen items :- Acetyl, Acrylic, cellulose acetate, cellulose acetate Butyrate, Construction debris, Electronic Waste, HIPS, Nylon, Plastic strips used for packaging, polycarbonate, polyethylene, polyethylene Terepthalate (PET), Polypropylene, Polystyrene, polyvinyl chloride (PVC) and thermocol.

[80] Id. section 3.

Section 8 of the act authorizes the prescribed authority to prescribe the manner in which any non-biodegradable material may be handled or disposed by the people. Where any land or building has become a dumping place or ground for unauthorized stocking or deposit of such material and is likely to cause nuisance or damage the drainage and sewerage or is likely to result in danger to life and health, the authority may forthwith take steps necessary at the cost of such person.

Under Section 9 no person ,by himself or through another ,shall knowingly or otherwise, throw or cause to be thrown, in any drain ,ventilation ,shaft ,pipe and fittings, connected with the private or public drainage works, natural or manmade lakes, wetlands any non-biodegradable garbage or construction debris or any biodegradable garbage by placing in a non-biodegradable bag or container likely to

i) injure the drainage and sewage system;
ii) interfere with the free flow or affect the treatment and disposal of drainage and sewage contents;
iii) be dangerous or cause a nuisance or be prejudicial to the public health, and damage the lakes, rivers or wetlands.

The section also prohibits placing of any bio-degradable or non-bio-degradable garbage in any public premises open to public view, although it can be placed in receptacles or deposited in locations designated by a local authority with jurisdiction in the area[82].Rule 6 of the Jammu and Kashmir Non-Biodegradable Material[83] framed under the Act imposes a responsibility upon the owners and occupiers of premises not to throw non-biodegradable material generated during construction activities in drains, nallahs, sewers, wetlands ,water bodies or on the surface land but handover such material to the municipal authorities for proper disposal .The rules further strengthen the hands of the prescribed authority by imposing responsibility upon municipal bodies/committees and district magistrates/deputy commissioners to implement the provisions of the Act in their respective jurisdictions[84].

An omission or commission in contravention of any of the provisions of the Act or of any rules, notifications or orders made or issued under the Act is punishable with imprisonment up to one month or fine up to Rs. 500or both .Punishment for the second or subsequent offence may extend up to 2 months and fine up to Rs. 10,000. Aiding, abetting or assisting in the commission of an Offence is punishable as in the case of a principal offender[85]. Section 11 holds companies as well as their responsible and in charge officials liable for contraventions committed by them. Offences are made triable in a summery way by judicial magistrates of First class[86] but are made compoundable, before the institution of the prosecution by an authorized officer; on payment of such sum as such officer may order. The sum, however, in no case can exceed the amount of fine prescribed for such offence[87]. The provisions of the Act are expressly declared to be in addition and not in derogation of the provisions of any other law for the time being in force on the subject[88].

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[81] Id. section 7.
[82] Id. section 9 (2).
[83] The Rules were notified vide SRO 122, dated 11th May ,2009.
[84] Id, Rule 4 &5.

### iii. The Biological Diversity Act,2002

The Act is not directly related to water but aims to conserve the biological diversity including aquatic resources, sustainable use of their components and fair and equitable sharing of benefits arising out of utilization of genetic resources. In addition to a National Biodiversity Authority the Act mandates the establishment of State Biodiversity Boards by each of the states to advise the respective state Governments on conservation ,sustainable use and equitable benefit sharing by local communities of biological resources .The Act also empowers a State Biodiversity Board to regulate ,by approvals, commercial utilization of biological resources and declare areas of biodiversity importance as Biodiversity Heritage Sites.

### iv. The Wetlands (Conservation and Management) Rules, 2010

The Wetlands (Conservation and Management) Rules,2010 have been framed by the Central Government under the provisions of the Environment (Protection)Act,1986 and are accordingly applicable to the state of Jammu and Kashmir. The Rules recognise that many wetlands are seriously threatened by reclamation through drainage and landfill, pollution (discharge of domestic and industrial effluents, disposal of solid wastes), hydrological alterations (water withdrawal and inflow changes) and over-exploitation of their natural resources resulting in loss of biodiversity and disruption in goods and services provided by wetlands[89]. Consistent with the mandate of the Ramsar Convention and the National Environmental Policy, 2006 to maintain the ecological character of wetlands, the Rules set up a regulatory mechanism for the following types of wetlands[90]:

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[85] See the Act ,section 10.

[86] Id. section 12.

[87] Id. section 13.

[88] Id. section 16.

## Protected Wetlands:

i) Wetlands categorized as Ramsar wetland of international importance under the Ramsar convention as specified in the schedule.

ii) Wetlands in area that are ecologically sensitive and important, such as, national parks, marine parks, sanctuaries, reserved forests, wildlife habitats, mangroves, corals, coral reefs, areas of outstanding natural beauty or historical or heritage areas and the areas rich in genetic diversity;

iii) Wetlands recognized as or lying within a UNESCO World Heritage Site;

iv) High altitude wetlands or high altitude wetland complexes at or above an elevation of two thousand five hundred metres with an area equal to or greater than five hectares;

v) Wetlands or wetland complexes below an elevation of two thousand five hundred metres with an area equal to or greater than five hundred hectares.

vi) Any other wetland as so identified by the authority and thereafter notified by the Central Government under the provisions of the Act for the purposes of these rules

The Rules prohibit certain activities within the wetlands. These activities include reclamation of wetlands, setting up of new industries and expansion of existing industries, manufacture or handling or storage or disposal of hazardous substances, solid waste dumping, discharge of untreated wastes and effluents from industries, cities or towns and other human settlements, any construction of permanent nature except for boat getlies within 50 metres or any other activity likely to have an adverse impact on the ecosystem of the wetland[91] .

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[89] The Wetlands (Conservation and Management) Rules, 2010 define a wetland under Rule 2(b )as "an area of marsh, fen, peat land or water, whether natural or artificial, permanent or temporary with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six meters and includes all inland waters such as lakes, reservoirs, marshes, swamps, tanks, backwaters, lagoons, creeks, estuaries, man-made wetlands; the zone of influence on wetlands, i.e, the riparian floodplain areas along the rivers to the extent they are flooded naturally, a perimeter of 200 metres from the highest water line observed in the last ten years; but does not include main river channels, paddy fields, those coastal wetlands covered under the notification of the Government of India in the Ministry of Environment and Forests issued under section 3 of the Environment (Protection) Act, 1986".

[90] Id. Rule 3.

The State Government is empowered to authorize undertaking of certain activities like withdrawal of water or the impoundment, diversion or interruption of water sources within the local catchment area of the wetland ecosystem, harvesting of living and non- living resources therein, grazing, treated effluent discharges from industries, cities or towns, human settlements or agricultural fields within the limits laid by the CPCB/SPCB, dredging, only if the wetland is impacted by siltation. However the State Government is required to ensure that a detailed EIA is carried out in accordance with the procedure specified in EIA Notification of September 2006 as amended from time to time. The Central Government has however been conferred with a paramount power to permit any of the prohibited activities or non wetland use (including conversion of a wetland to non-wetland use) on ground of expediency in the public interest[92].

The Rules provide for the constitution of Central Wetlands Regulatory Authority (CWRA) with powers to appraise proposals for identification of new wetlands, projects or activities in consultation with the concerned local authorities. Decisions of the CWRA can be appealed against by aggrieved persons only before the National Green Tribunal[93] . The wetlands specified in the schedule are made subject to the regulations under the rules. The Schedule includes 24 wetlands of India and the wetlands from J&K State included in the Schedule are Tosmoriri, Wular lake, Hokarsar and Surinsar and Mansar (Complex).

The State Governments are required to prepare 'Brief Document' identifying and classifying wetlands within their respective territories in accordance with the criteria laid down in Rule 3 and submit the same to the Central Wetlands Authority. The Authority may, if needed, and in consultation with the State Government refere it to an institute or university with multi -disciplinary expertise related to wetlands for survey in terms of the criteria specified in Rule 3. The Central Government may, on receipt of recommendations of the Authority and after due consideration of the objections and suggestions from the effected general public, issue notification notifying the area of the wetland, its category or classification to be regulated under the Rules. The Authority has been conferred with a power to suo motto review its any decision or issue direction for inclusion of wetland under the Rules[94].

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[91] Id. Rule 4.

[92] Id.Rule 4(2).

[93] Id.Rule 9.

In order to avoid overlapping wetlands falling within National Parks, Sanctuaries are left to be regulated by the provisions of the Wildlife. (Protection) Act, 1972 and those falling within the protected or notified forest areas are to be regulated by the provisions of the Forest Act, 1927,the Forest.

**Table 1**

**List of wetlands identified as Ramsar sites and subject to regulatory control under the Rules***

| **S.No.** | **Name of the wetland** | **State** | **S.No.** | **Name of the wetland** | **State** |
|---|---|---|---|---|---|
| 1 | Ashtamudi Wetland | Kerala | 14 | Ropar | Punjab |
| 2 | Bhitarkanika Mangroves | Orissa | 15 | Sambhar Lake | Rajasthan |
| 3 | Bhoj Wetland | Madhya Pradesh | 16 | Sasthamkotta Lake | Kerala |
| 4 | Chilika Lake | Orissa | **17** | **Tsomoriri** | **Jammu & Kashmir** |
| 5 | Deepor Beel | Assam | 18 | Vembanad-Kol Wetland | Kerala |
| 6 | East Calcutta Wetlands | West Bengal | **19** | **Wular Lake** | **Jammu & Kashmir** |
| 7 | Harike Lake | Punjab | 20 | Chandratal | Himachal Pradesh |
| 8 | Kanjli | Punjab | 21 | Renuka | Himachal Pradesh |
| 9 | Keoladeo National Park MR | Rajasthan | 22 | Rudrasagar | Tripura |
| 10 | Kolleru Lake | Andhra Pradesh | 23 | Uppar Ganga | U.P. |
| 11 | Loktak Lake | Manipur | **24** | **Hokarsar ( Hokera)** | **Jammu & Kashmir** |
| 12 | Point Calimere Wildlife and Bird Sanctuary | Tamil Nadu | **25** | **Surinsar & Mansar (Complex)** | **Jammu & Kashmir** |
| 13 | Pong Dam Lake | Himachal Pradesh | | | |

***Source: The Schedule appended to the Wetlands (Conservation and Management) Rules, 2010**

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[94] Id.Rule 6(10).

(Conservation) Act, 1980 and the Environment (Protection) Act, 1986. The gaps in the regulation of wetlands within the protected and notified forest and wildlife areas under the Forest and Wildlife laws are to be plugged by involving provisions of the Environment (Protection) Act, 1986. The Wetlands situated outside the protected or notified forest areas are also to be regulated by the provisions of the Environment (Protection) Act, 1986[95]. The forest Department of the concerned State is to regulate the activities for management and wise use of wetlands situated within protected or notified areas. But the identified activities for management and wise use of wetlands situated outside the protected or notified forest areas are to be regulated by the nodal department or the relevant local state agencies designated by State for the said purpose. The State Government in J&K has constituted wetland specific authorities within the state for their development[96]. Clearly, therefore, management of wetlands and regulation of activities therein is left in the realm of multiple authorities where co-ordination may often turn to be a casualty.

### v. The Jammu and Kashmir Water Resources (Management and Regulation) Act, 2010

The Water Resources Act,2010 aims to consolidate the law relating to use of water, the measurement, construction, control and management of works with respect to water storage, conservation and protection, the irrigation, water supply, drainage, flood control and prevention, the improvement in the flow of water, the protection and improvement in the physical integrity of water courses, lakes and springs, the safety and surveillance of dams, the establishment of the State Water Resources Regulatory Authority for regulating water resources, ensuring judicious, equitable and sustainable management, allocation and utilization of water resources, fixing the rates for use of water and matters connected therewith or incidental thereto (The Jammu and Kashmir Water Resources (Management and Regulation) Act, 2010)[97].

The Act makes every water source[98] in the state as the property of the state government and any proprietary ownership, or any riparian or usage right on water resources vested in any individual, group of individuals or any other body, corporation, company, society or community is, from the date of commencement of the Act to be deemed to have been terminated and vested with the Govt[99]. No person can use any water from any source, surface or ground, or collect or extract any material from water sources except in accordance with the provisions of the Act.

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[95] Id.Rule 7.

[96] See supra note 49.

[97] See the Jammu and Kashmir Water Resources (Management and Regulation) Act, 2010, the preamble.

[98] Id. Section 2(z z e) defines "water source" as 'a river and its tributaries, stream, nallah, canal, spring, pond, lake, water course, underground water or any other source from which

The Act introduces a licensing regime of water usage for domestic, (sections 5-23) commercial and irrigation purposes (sections 24-51) which are made subject to tariffs, charges and other conditions. Part III of the Act (sections 52 –55) deals with drainage and prevention of water logging. In regulating the irrigation supplies (sections 56 – 65)the irrigation authorities , the Chief Executive Engineer and Chief Agricultural Officer of a district are empowered to restrict landowners to grow, plant or sow particular crops having regard to the soil characteristics, climate, rainfall and availability of water. Persons who sow, grow or plant unauthorised crops are made subject to penalty and payment of higher rates of water charges (section 62).

Section 63 provides for preparation in the public interest of small schemes for irrigating lands not exceeding 100 hectares. After the preparation of the scheme is accomplished the management of the scheme and distribution of water there from is to be left in the hands of a water Committee composed of five persons to be elected by land owners, occupiers and beneficiaries of land included in the scheme for a period of 3 years (Section 64). Part –V of the Act provides for measures for ensuring safety of irrigation works. Fishing or plying of boats etc in a reservoir, pond, tank, or across a water course or channel, maintained or controlled by the Government, without proper permission is prohibited.[100] The Act also imposes prohibitions on abstraction of water, deposition of any material or waste in or near a water channel and discharge of sewage or industrial effluent in an irrigation work[101].In order to control floods the Act provides for declaration of flood basin areas, safety of embankments, and control of bed and banks of water sources, navigation channels, intake channels, city channels and flood spill channels[102].In Chapter-V of the Act a compensatory mechanism is envisaged for

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water becomes available for use but does not include a shallow in any private land for domestic use of the owner thereof'.

[99] Id. Section 3.
[100] Id.Section 70.
[101] Id.Sections ,72,73 and 74.
[102] Id.Sections 75-87 (Part –VI ).

damages to crops, trees, buildings or other property ensued due to execution of any irrigation or flood control related work or operation[103].

Any person, group of persons, Government Department, local authority, corporation, company or society or other body intending to install a unit requiring usage of water for generation of electricity, irrigation, drinking purposes (domestic, commercial, industrial or institutional), running of water mills or exploration and exploitation of ground water has to obtain a license after submission of a plan and its approval by the Authority[104]. The plan has, however, to be consistent with the State Water Policy. The state however cannot permit use of water for generation of electricity under the licensing system or for irrigation projects in a manner that undermines or bypasses the requirement of EIA in the cases specified under the EIA Notification of September 2006(EIA Notification, 2006)[105].

Amongst the series of water related laws operating in the state the Water Resources Act, 2010 is the first legislation that provides for the development, regulation and management of ground water resources in the state[106]. The state, on the advice of the authority, is empowered to notify areas for the development and regulation of ground water .Extraction and use of ground water in such areas can be made only after obtaining license from the authority. Extraction and use of ground water through hand operated manual pumps or other manual devices in private lands does not, however require such a license[107]. In order to endeavour ground water recharge programmes both in urban as well as rural areas, the authority is to identify the areas , strategies , types and designs of structures to promote rain water harvesting including especially through roof-top rain –water harvesting methods[108].

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103 Id .Sections 88-89.

104 Id. Sections 90-110.

105 The Schedule( in project/activity 1( c) appended to the Notification and as amended in 2009 lists river valley projects that require prior environmental clearance (before a project proponent undertakes implementation of the project ) from the Central MOEF (>50 MV hydroelctric power generation projects involving >1000 ha. culturable command area ) and State Environmental Impact Assessment Authority (<50 MV > 25MV hydroelctric power generation projects involving <1000 ha. culturable command area) respectively after conduct of environmental impact assessment.

106 The Water Resources Act, 2010, Section 111-123 (Chapter VII).

107 Id. Section 112.

108 Id, Section 122.

The Act provides an in-house grievance redressal and adjudicatory mechanism for the consumers of water; it bars jurisdiction of civil courts[109] though decisions and orders of the Authority can be appealed by the aggrieved before the High Court of J&K[110]. For the speedy trial of offences the Act also envisages constitution of special courts and empowers CJM's to take cognizance of offences on the basis of reports by police or complaints made by authorised officers[111] .The state police is also conferred with jurisdiction to take cognizance of the offences under the Act[112]. The Act, amongst the series of other offences, makes it an offence to dispose off house- sewage or other house- hold waste into any water source[113]. The penalties imposed under the Act are in addition to any other liability e.g. compensation and revocation of licenses[114]. The Act does not bar punishment for acts under any other law, if such acts are also made punishable under such other laws in force[115]. Some of the offences which may be committed by consumers, licensees and other persons have been made compoundable with power vested with authorised officers to receive compoundable sums fixed for different offences under the Act[116].

The provisions of the Act are in addition to and not in derogation of existing related laws[117]. The provisions of the Act are to have effect notwithstanding anything inconsistent in any other law in force in the state[118]. The only exception to this overriding effect of the Act in case of inconsistency with other laws is the law relating to consumer protection in force in the state[119]. Obviously therefore, the Act is subject to all the principles relating to protection of consumers under the consumer legislation.

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[109] Id.See sections 23, 123 ,135 providing for appeals to the Authority,section152 providing for appeals to authorized officers of the authority and section 175 providing a mechanism for adjudication by appointed members of the Authority;section177 bars jurisdiction of ordinary civil courts.

[110] Id.Section 150.

[111] Id.Sections 180,172.

[112] Id.Section 179.

[113] Id.Section 156.

[114] Id.Section 178.

[115] Id.Section 173.

[116] Id.Section 181.

[117] Id.Section 196.

[118] Id.Section 195.

[119] Id.Section 194.

Consistent with the National Water Policy, 1987,2002 of the Government of India the Act mandates the Government of J&K to prepare, from time to time, State Water Policy and plan for the development, management, planning, utilization and monitoring of water resources in the state which shall keep the following objectives in view:-

## Designing future water plans and policies by the state: the statutory mandate and guidelines as policy challenges for water governance

For the development, management, planning, utilization and monitoring of the water resources in the state the state Government is mandated to prepare state water policy and plans from time to time which shall be in tune with the objectives enumerated in section 4 of the Act. Most of these objectives are policy challenges which cannot be achieved overnight but can serve as a blueprint for an efficient water governance regime with a firm scientific base.

## Coordination, Conservation and water allocation prioritization

The Act aspires for the development by the state of an effective institutional mechanism for coordinating the management of water resources on a hydrological unit basis with a multi sectoral and multi disciplinary approach. Likewise the water policy shall stress upon an integrated and multidisciplinary approach to planning, formulation, clearance, implementation and monitoring of water projects and schemes including catchment treatment and management, and ecological aspects. Such an approach shall ensure involvement of users, farmers and voluntary organizations in various aspects of planning, design, development and management of water resource schemes (both for drinking water and irrigation). The rehabilitation of affected people and command area development should also form part of the water policy.

Policy initiatives will have to stress more on efficient water utilization and public awareness of the importance of its conservation. Innovative techniques based on science and technology will have to be pressed into service to eliminate pollution of water resources and promote recycling and reuse of water. Planning, development and conservation of the water resource has to be made on an integrated and environmentally sound basis. The state is to follow the following scheme of prioritization in the allocation of water, subject to modifications if so warranted by area /situation specific considerations:

i) drinking water including washing & bathing;
ii) irrigation;
iii) generation of electricity;
iv) ecology; and

v) agro Industries and non-agricultural industries.

In the planning and operation of systems water allocation priorities should be fully ensured. In this context the drinking water needs of human beings should be the first charge on any available water. The Act, besides above, enshrines the following policy challenges to be endeavored by the state:

1. **Information System:** A well developed information system with a network of data bank and quality data bases is a prime requisite for proper resource planning. Accordingly the Act stresses upon the development of information system to collect, process and provide data regarding the availability of water, actual use of water for different purposes, the future demands of water for diverse purposes, hydraulic data with emphasis on the use of modern technology including remote sensing techniques. The state is therefore mandated to establish a network of data banks and data bases using modern computer technology and exchange of data among the various agencies .Such a system can integrate and strengthen the existing agencies and facilitate free exchange of data among them. The data base through GIS can facilitate comprehensive and reasonably reliable projections of future demands for water for diverse purposes.
2. **Maximizing Availability:** Water resource being utilizable resources, need to be conserved and the availability augmented by measures for maximizing retention and minimizing losses, it should be made available to water shortage areas by transfer from other areas.
3. **Project Planning:** Water resource development projects should include comprehensive EIA to evaluate maintenance, modernisation and safety of the structures and system created through massive investments like hydro projects, dams etc should be ensured through monitoring by proper guidelines, continuous surveillance and regular visits by experts.
4. **Ground water development:** There should be an integrated and coordinated development of surface and ground water and to ensure their conjunctive use. Ground water resource regulation should ensure social equity and avoid over exploitation so that it does not exceed the recharging possibilities.
5. **Preservation of environmental quality and minimisation of adverse impact** : In the planning, implementation and operation of projects preservation of the quality of the environment and the ecological balance should be a primary consideration. The adverse impact on human lives, settlements, occupations,

economic and other aspects and the environment need to be minimized and offset by adequate compensatory measures.

## Part III

## The integrated management and pollution prevention challenges

The right to water as a human right entitles its holder to water that is sufficient, safe, of acceptable taste, physically accessible, as well as affordable. These characteristics have been divided into availability, quality and accessibility with a corresponding obligation on the state to respect, meaning no interference, protect, from third parties, and fulfil, which means to facilitate, promote and provide[120].Water as a resource is one and indivisible whether it is from rainfall, rivers, surface ponds, lakes or from ground. These resources as a whole are all parts of one system and part of a larger ecological system. Success in their regulation can be measured in terms of what net efficiency gains are being transferred to the society. This however requires extensive institutional development in water resource management. Although enactment of good laws is the first step to legal reform, its effectiveness depends on the more crucial step of restructuring the institutions to implement the new law as these institutions are often most resistant to change, due to negative effects the change may have on them. it is being argued that in developing countries the most challenging issues to god governance are fight against corruption, both at government and private level[121].

The plethora of laws operating in the water resources field creates diverse authorities who are invested with multiple powers and responsibilities under the individual legislations. Howsoever earnestly the individual officers and authorities may endeavour to exercise these powers strictly in terms of the objectives of the individual legislations, it will be an exercise of power with a myopic objective in view where the larger objectives of other legislations may either be undermined or not fully considered for lack of expertise or coordination in other related fields. This problem may assume greater proportions under central and state legislations which create/establish central and state authorities or agencies to deal with a common water resource.

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[120] See "the Legal Framework of Water Resources Management -Lessons Learned from the IDLO Seminar on Legal Framework of Water Resource Management" conducted on September 11-22, 2006 in Rome -in International development Law organisation's 'Development Law update' Issue 6/2006 – PP 2-7/DL0 2006 – IDLO.

[121] Rachael A. McDonnell (2008): "Challenges for Integrated Water Resources Management: How Do We Provide the Knowledge to Support Truly Integrated Thinking?"- International Journal of Water Resources Development, 4:1,131- 143.

Planning and implementation in respect of flood control, irrigation (both individual and multipurpose) and power generation involve a wide range of issues like environmental protection, rehabilitation of project affected people and live stock, public health consequences, dam safety etc. The growth process both in population and economic activities inevitably lead to increasing pressures and demands for scarce water resource, for human, industrial, agricultural, hydro-power ,environmental, recreational and other purposes .Distribution of water, therefore, involves complex problems of equity social justice and environmental protection. Development and exploitation of ground water resources also gives rise to questions of judicious and scientific resource management and conservation.

All these questions need to be tackled on the basis of common policies and strategies. Besides, implementation requires the technical, financial and administrative capacity to administer the law. This necessitates the need for capacity building in all water related regulatory spheres to ensure fulfillment of policy objectives. Further, to achieve the desired objectives it is necessary to make water users as instrumental part of implementation and provide communities with opportunities of self policing and self implementation through water user associations. Clearly, therefore, there is an utmost urgency to establish a common grid for diverse regulatory authorities which can act as a common platform for informed decision making and facilitate an integrated, coordinated approach to water resource management in the state.

For good governance in an integrated water resources management it is fundamental that efficient, balanced and equitable decisions are made. However, for informed decision-making, both reliable and timely information must be available. Once Geographical Information System (GIS) and associated data bases to develop information infrastructure is pressed into service, it will have several beneficial impacts upon the water governance. Information will be easily accessible and decision making will be endeavored and based on a wide and integrated knowledge of an area. Easy access of information even to organizations and stakeholders not directly concerned with water management will ensure that water issues are considered in decision making in other sectors and levels of government other than the concerned agencies. Besides the role of the civil society will be enhanced by easy access to information which will ensure informed and empowered public participation. But in the development of information support system there can be administrative and political challenges as well. One of the political challenges will be the task of developing equitable, efficient and safe water and sanitation services. Though data gives power its collection and management involves financial cost that is why departments, in the absence of a common grid, may show reluctance to share data with other (rival) departments which may constrain them to use other legal tools like RTI Act to overcome the difficulties.

GIS based information needs technology and skills at the infrastructural level and availability of data from various sources, operational and managerial inputs and analysis to ensure sound and unbiased viability of data. At present on the shelf existing methods are being used which limit the opportunities for an integrated water resources management To operationalize the new techniques it has been suggested to work in tandem with those in Geographic information science, ecology and social sciences to develop new methodological approaches to achieve integrated water resources management ambitions and ensure returns of equity, efficiency and sustainability[122].

The basic objective of the water Act, 1974 is prevention and control of pollution and the maintaining or resolving of wholesomeness of water (Preamble). To achieve this, the Act flatly prohibits discharge of any pollutant into the waters without a consent and compliance with standards and treatment requirements. No doubt this is the first step quite essential to restore the integrity of waters but reduction of pollution is not enough to achieve the broader objectives. Once the objective of restoration is achieved, there must be an adequate mechanism for maintaining the wholesomeness of water. In J&K Water Resources Act fills this gap.

From a biological monitoring point of view, the ecological impairment of a water body can be caused by flow reductions, channelization, loss of riparian wetlands or flood plain habitat etc. These aspects need a direct mechanism to ensure corrective measures other than numeric water quality based effluent limits for point sources. No doubt the Water Act defines pollution as contamination of water or alteration of its physical, chemical or biological properties, the Act hardly provides a clear cut programme for all significant sources of aquatic ecosystem impairment. The principal of sustainability suggests a better integration of water quality and aquatic ecosystem restoration and protection with water resources management. A more systematic approach needs to be put in place for implementation in order to restore and maintain the chemical, physical, and biological integrity of state's waters and aquatic ecosystem.

The Water Act, 1974 was designed during a period when industrial sources of pollution were viewed as most severe. The Act is primarily designed to control point source pollution from industrial units and municipal points .It has duller teeth to control non point sources of water pollution. Agricultural runoff, animal wastes, soil erosion, fertilizers, pesticides and other farm chemicals that are a part of runoff, construction runoff and siltation from mines are major contributors to the states water pollution problem. Viewed thus it can hardly serve the purpose in an increasingly post industrial era in which non- industrial pollution sources, in view of given economic and land use pressures, are assuming greater significance. Clearly therefore, quality of water cannot be restored or maintained unless the complex and difficult problem of non point sources is addressed. In order to fill the gap between industrial and non- industrial pollution sources it is desirable to adopt a mandatory system of enforceable best practice standards for polluted runoff and other kinds of non- point source pollution analogous but not identical to the system of technology based controls on municipal and industrial point sources[123]. Such standards should however be flexible to accommodate differences in climate, soils, topography, land use, economic and other factors.

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[122] Id.

Massive migration to urban and sub- urban areas and sprawl are rapidly threatening integrity of water resources because of multiple discharges with significant environmental implications particularly the radical alterations in the hydrology other than characteristics of the water around the state. Today there is a shifting paradigm of environmental regulation. It is now well recognized that instead of end of the pipe pollution loads there are increasingly significant impacts arising from the distribution, use and disposal of products and a wider regulatory perception is needed to encompass this. Action based upon life cycle thinking about products has the potential to be more effective than trying to address diffuse pollutants through land use regulation and is certainly more effective than regulating end of the pipe emissions. To overcome these challenges it has been suggested in some other countries that future strategies for water pollution control now must be tailored to the problems and realities of a post industrial society[124] .

From 1974 till date Parliament of India has adopted many amendments to water Act, 1974 but most of these revisions added or changed details without changing the basic philosophies and implementing methods. Viewed from the broader statutory objective to restore and maintain the wholesomeness of water, the statutory tools are either dull or in some cases inadequate to accomplish the task. The appropriate tools have yet to be forged. The Act focuses more on maintenance than on restoration, on chemical integrity to the virtual exclusion of physical and biological integrity. It is time to retool the Act to address these statutory goals that have received relatively less attention and to focus on the prevailing threats to the health and integrity of aquatic ecosystem.

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[123] Robert W. Adler 'Resilience, Restoration and sustainability: Revisiting the Fundamental Principles of the Clean Water Act", Journal of Law and Policy -Vol. 32: 139 (2010) at P. 162.

[124] Id.at p.162.

Both the Water Act, 1974 & the [J&K] Water Resources Act, 2010 provide for formulation of comprehensive plans in respect of water quality .While the SPCB implements centrally set uniform controls (standards) on industrial units and sewage treatment plants, the State Government is better suited to address land use and other non- point source pollution problems that vary widely with different local geography, climate topography, economics and other factors. There is however absence of representation inter se the SPCB and the Water Resources Authority to attain the common goal of maintaining the quality of water. The Water Resources Authority is composed of 3 members only while the SPCB comprises of several members, the State Government can fill this gap while constituting the two bodies, though due representation in the two bodies of members inter se ought to be a regular feature rather than a matter of casualty. Alternatively a joint sub-committee is recommended to facilitate a co-ordinated and integrated decision making on regular basis and both legislations have space in their provisions to accommodate formulation of such committees.

The Water Resources Act, 2010 has put an end to the traditional riparian doctrine for wider societal needs and introduces a license based regime of water use, investing the state with responsibilities as trustee of all water resources. Being at the embryonic stage, it can be said to be a positive step in the right direction so as to achieve policy goals and chart a sustainable future for state's water resources. The use of underground water through traditional hand pump practice in private lands is not changed and would continue to attract the riparian principles for adjudication. However regulation of licensing under the Water Act,1974 and the Water Resources Act,2010 may result in disputes demanding settlement of jurisdictional issues under the two adjudicatory systems provided under the two Acts and other related laws.

## Conclusion

To sum up, water law reform in the state, in order to be an adoptable model, need to focus not merely on organizational issues but on the governance of the relationship between the regulator and the user of the resources. As is obvious from local water related legal history, a wide variety of competitive users of water resources in the state has incremental dependence upon the resources which cannot be undermined at any cost. Due to climate change ,glacial melt in the Himalayas is projected to increase flooding, rock avalanches from destabilized slopes, affect water resources and decrease river flows as the glaciers recede, decrease fresh water availability, impinge on sustainable development as it may compound the pressures on natural resources and the environment associated with rapid urbanization, industrialization, and economic development[125].Under such circumstance the growing demand on resources across competitive users, declining water quality, inadequacy of safe drinking water, increasing droughts, unabated flooding ,increasing financial crunches can mount newer types of pressures and problems which the regulators will have to tackle. This may in turn demand flexibility in laws to allow regulators to make adjustments and adapt it to the changing climatic conditions. Presently environmental law and policy are not keeping up with the need for adaptation. For example, environmental and natural resources laws are currently based on assumption of ecological 'stationarity' and pursue goals of preservation and restoration. These assumptions and goals do not fit a world of continual, unpredictable and non-linear transformations of complex ecosystems that the climate change is creating[126].Hopefully the state can address the need for adaptation of its water and other planning laws to the changing climate conditions as it has been conferred with power not only to frame its water plans and policies but also review them from time to time.

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[125] IPCC,2007.

[126] *Robin Kundis Craig* "stationarity is Dead"— Long Live Transformation: Five Principles for ClimateChange Adaptation Law"- *Harvard Environmental Law Review* -Vol. 34[2010] pp.10-70.

# DOMESTIC VIOLENCE ACT 2005 – A CRITICAL ANALYSIS

Gulafroz Jan*

## ABSTRAT

*Law is determined by the sense of justice and moral sentiments of the people governed by it and, therefore, legislation can only achieve results by staying relatively close to the prevailing social norms. The efficacy of law as an instrument of change depends upon variety of factors that include not only the prerequisite that it be free from vagueness and ambiguity, but also and most importantly, the assurance that it is reasonable, not only in sanctions used but in the protection of the right of those who stand to lose by violation of the law. In this paper Domestic Violence Act has been discussed critically.*

## Introduction

Law is determined by the sense of justice and moral sentiments of the people governed by it and, therefore, legislation can only achieve results by staying relatively close to the prevailing social norms. The efficacy of law as an instrument of change depends upon variety of factors that include not only the prerequisite that it be free from vagueness and ambiguity, but also and most importantly, the assurance that it is reasonable, not only in sanctions used but in the protection of the right of those who stand to lose by violation of the law.[1]

Domestic violence Act promulgated by the Parliament of India with much funfare and the avowed purpose of protecting the women is largely ill advised as it is structured to add to their mesiries rather than providing succor. This is by no means to negate that violence at domestic level does not exist or that there is no need for protection of women against barbarism. What needs to be emphasized is that mere creation of rights can never be the anethemia for social evils. Legal reforms are meaningless unless they are preceeded by social reforms. Gross abuse of Sec. 498 (A) by unscrupulous lot has been well known to be lost sight of and perhaps the cry of real victims get ignored. In relation to cases registered by victims under Section 498-A the conviction rate is very low. Lessons learnt from experiment needed to be born in mind by lawmakers before they introduce yet another piece of legislation without built in checks against misuse.

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[1] Steven Vogo, "Law & Society" Pg. 232.

Domestic Violence Act fails, at various fronts, the muster of an effective piece of legislation aiming social engineering. For the starter, one may say, it is founded on the premise that domestic violence at the hands of men folk is general rule in every next household; It creates new legal concepts that are dangerously imprecise; It promotes social norms that are in stark conflict with existing traditions, values beliefs and sense of morality; It provides a process that is lopsided as it lacks in attributes of fairness and reasonableness.[2]

In this paper an attempt is made to deal with the subject against the backdrop of, and with reference to, the concepts newly introduced in light of the meaning assigned to each of them in the overall scheme of substantive provisions of the Domestic Violence Act. Emphasis will be laid to examine whether this law has strengthened the cause of women's right to be treated equal to men in particular in matters of right to protection against violence i.e., whether the law purports to protect women from violence or actually penelise her.

## Domestic Voilence Act

The Domestic Violence Act 2005 is an piece of legislation meant to provide more effective protection to the right of women guaranteed under the constitution who are victims of violence of any kind occurring within the family.[3] The very nomenclature of the Act indicates that it is not restricted to violence perpetuated against women by her husband or in-laws. It includes under its protective umbrella every women living in a domestic relationship as a member of family with the person indulging in violence. Thus the law protects women who are victims of violence occurring within family or in domestic relationship. Moreover Act has been designed to create certain civil rights. Some decteratory (e.g., right to protection against Domestic Violence) and some substantive (e.g., right to maintainence, right to compensation, right to shared household). But the law essentially falls under the criminal jurisprudence not merely because it is enforced by magistrate under CPC 1973 but also and mainly because the consequences of breach of certain orders passed by criminal court for affording to the aggrieved women the due protection of law has been made a new penal offence.[4]

It is imperative for the study of this kind to find out as to what was the legal position in domestic violence cases prior to introduction of this new law, so that it can be examined as to what is new about this additional measure.

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[2] Gauba R.K, "Domestic Violence Law – A Recipe for Disaster?" NYAYA DEEP, Vol. VIII, Issue 3 Jul. 2007.

[3] Object of the Domestic Violence Act 2005. (D.V. Act)

[4] Sec. 31 of Domestic Violence Act.

## Brief Analysis of Legal Position in Domestic Violence Cases Prior to Introduction of the new Law:

The main penal law in India is provided in Indian Penal Code 1860 (IPC), initially introduced by the British rules but adopted for continuation upon independence. Chapter XVI of IPC relates to offence affecting the human body which include not merely culpable homicide (including or amounting to murder)[5] but also hurt[6] and involves within its sweep cases of wrongful restrain, wrongful confinement, use of criminal force assault, kidnapping or abduction,[7] trafficking in human beings and sexual offences including rape.[8] The offence of Dowry death[9] was added in 1986, along with the offence of cruelty by husband or relatives of husband[10] in the wake of outrage felt by the civil society due to increased incidents of cases where women had been subjected to harassment, soon after marriage mainly with a view to coerce them or their relatives to meet unlawful demands for dowry or on account of failure to do so.

Chapter XX of IPC provides for offences relating to marriage that include not merely bigamy and adultry[11] but also cohibition caused by a man deceitfully inducing a belief in women of lawful marriage offence of criminal intimation[12] or intentional insult[13] are penal clauses that can also be invoked, should the need arise, by wife against husband or vice versa. Offering insult to the modesty, or intrusion upon the privacy of a women by words, gestures etc are an offence, which provision makes no exception in favour of husband.

All these offences generally do not provide for an exception in favour of a husband or male relatives. So long as the victim women is able to pin down the offender with dishonest or fraudulent intention. Eversince the concept of entrustment of dowry in favour of husband or his near relative at the time of marriage came to be accepted by the courts in India, the offence under Sec. 406 IPC has been regularly and flagrantly used by women victims for demanding penal consequences for conduct leading to marital discard.

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[5] Sec. 299 IPC.

[6] Sec. 319 IPC.

[7] Sec.

[8] Sec. 375 of IPC.

[9] Sec. 304(B) of IPC.

[10] Sec. 498-A of IPC

[11] ------------

[12] Sec. 506 IPC.

[13] 504 IPC

## Protection under Domestic Violence Act

Domestic Violence Act defines, "domestic violence" to include "any act omission or commission or conduct" of the man in question in relation to the aggrieved women in case it attracts any of the four clauses:

a) Harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical of the aggrieved person or tends to do so and includes causing physical abuse,[14] sexual abuse,[15] verbal and emotional abuse[16] and economic abuse.[17]

b) Harasses, harms injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security.[18]

c) Has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause a, b or

d) Otherwise injures or causes harm, whether physical or mental, to the scope and width of the new offence relating to Domestic Violence.

Domestic Violence Act fails, at various fronts, the muster of an effective piece of legislation aiming social engineering. For the starter, one may say, it is founded on the premise that domestic violence at the hands of men folk is general rule in every next household; It creates new legal concepts that are dangerously imprecise; It promotes social norms that are in stark conflict with existing traditions, values beliefs and sense of morality; It provides a process that is lopsided as it lacks in attributes of fairness and reasonableness. So if we talk in detail the following provisions need to be over looked into again.

### a) Protection orders in favour of Women – No Additional Remedy, a Camaflouge

After coming in force of the Domestic Violence Act the general perception among the public seems to be that Domestic violence is an offence but contrary to this, reality is that Domestic Violence per-se is not an offence under Domestic Violence Act. What has been made Criminal is the conduct of male offender viz a viz women in the domestic environment amounting to breach of protection order obtained by the women from the Magistrate.[19]

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[14] Physical

[15] Sexual abuse

[16] Verbal & emotional

[17] Economic abuse

[18] Clause be is clearly meant to extend the offence under Sec. 498 A IPC for the benefit of women related to the male offender otherwise than an account of matrimonial convection.

In order to understand true meaning of it. It is very important to know how and what kind of protection order can be obtained by women whose breach amount to offence under Domestic Violence Act. As per Sec. 18[20] of Domestic Violence Act Magistrate is empowered to issue protection order upon prima facie satisfaction that domestic violence has taken place of is likely to take place i.e., women can approach magistrate not only when she is actually subjected to Violence but even if she is apprehending such violence. Now, this protection order is actually a prohibiting relief calling upon respondent to refrain from certain acts against complainant.

The jurisdiction vested in Magistrate to pass these prohibiting order goes against legal principles that are applicable to law of injunction e.g., injunction cannot be granted when equally efficacious relief can be obtained by other usual mode of proceeding. Since all the acts which have been treated as unlawful under Domestic Violence Act, have been the part and parcel of criminal law of country and therefore every person is expected, even without a prohibiting order (in the form of protection order) to refrain from causing any harm or injury to mental or physical health of women. Question arises: Is that husband against whom no protection order been passed free to cause harm to his wife? If the answer is obviously "No" then it is beyond comprehension that how the issuance of protection order would add to her protection against repetition of violence in future. Hence it is submitted that the remedy in the name of protection order is a camouflage.

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[19] Sec. 31 of Domestic Violence Act *penalty for breach of protection order by Respondent.*
A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for the term which may extend to one year, or fine which may extend to twenty thousand rupees or with both.

[20] Sec. 18 Protection Order : The Magistrate may, after giving aggrieved person and respondent an opportunity of being heard and an being primafacie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit respondent from:
a) Committing any act of domestic violence.
b) Aiding or abetling in commission of Domestic Violence.
c) Entering the place of employment of aggrieved person, or if the person aggrieved is child, its school or any other place frequented by aggrieved person.
d) Attempting to communicate in any form, whatsoever with the aggrieved person, including personal oral or written or electronic or telephonic contact.
e) Alienating any asset, operating bank lockers or bank accounts used or held or enjoyed by both parties jointly or singly by respondent, including her stridhan or any other property held either jointly by the parties or separately by them without leave of Magistrate.
f) Causing violence to the depends and other relatives of aggrieved person who give her assistance.
g) Committing any act as specified in protection order.

Moreover, the order which may be passed by Magistrate to protect aggrieved women from possible domestic violence includes an injunction asking the respondent from being in vicinity of any place that may be frequented by aggrieved persons or from operating a bank account enjoyed by parties, even if it were held singly by respondent. The law makers in their anxiety to provide legal protection to the women seem to have gone over board. The place frequented by the aggrieved person would undoubtly include house were both parties may have been living together before their relations turned sour. By asking the male respondent to stay away would in fact be throwing out the male respondent from his own house similarly by asking male respondent to refrain from operating bank account held singly by him only because he had shared its credit assets with the aggrieved women at some stage, the Magistrate would in fact be depriving the former from his daily substance, in the name of affording protection to the women.

Further more Sec. 23[21] of Domestic Violence Act empowers the magistrate to pass an interim order in the course of any proceedings before him that would include under Sec. 18. Under some provision, upon prima facie satisfaction (on the basis of affidavit) interalia, that application discloses that there is likelihood of domestic violence being committed, he may grant exparte protection order. There is nothing in the entire statude to indicate as to how long such an ex-party order would remain in force. In this view, dicta of Sec. 25 that a protection order under Sec. 18 shall be in force till the "aggrieved person applies for discharge" would operate with equal force even for an interim order. The general rule under CPC[22] is that in case exparte injunction has been granted, the application for injunction has to be finally decided within thirty days cannot apply to these proceedings under Domestic Violence Act, as Sec. 28 renders it subservient to CrPC. In the face of provision contained in Sec. 28 this shall be the position even if relief under Sec. 18 is claimed by virtue of Sec. 26 before civil court.

Bearing in mind the above reffered provisions of law, possibility cannot be ruled out that women should introduce some doubts about the conduct of the male respondent with whom she has lived for sometime in a shared household and in her anxiety to bind him, approach a Magistrate with an application under Sec. 18 read with Sec. 23 asserting, an affidavit, that the latters is likely to subject her to some emotional abuse and seek an exparte interim protection order prohibiting him from entering his own house or operation his own bank cannot thereby by rendering him totally at her mercy. The incongnuity of the impact hits in the face when one reads these provisions in conjunction with the penal clause under Sec. 31 that renders breach even of interim order a cognizable offence attracting substantive sentence. In this scenario, the concerned male respondent is likely to be deprived of all possibility of presenting his side of the story since there is nothing stopping an unscrupulous women from following the grant of an exparte interim order immediately with an application of that order has been passed.

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[21] Sec. 23 power to grant interim and exparty orders.

[22] Order 39 Rule 3A of Civil Procedure Code (CPC)

### b) Right to Reside

There are numberless cases where upon the breaking up of marital bond, women have been thrown out of the matrimonial homes. In such situations the victims, in particular form orthodox background find it totally unacceptable to go back to their parental family for shelter or support. The provisions of maintenance allowance under Sec. 125 of CrPC was essentially created as a measure of protection to such vulnerable group in as much as there proness to abuse, when in lurch, is a cause of concern of orderly society. The courts, in recent times, have shown innovation by binding the husband (or male relative) with responsibility to provide some residential accommodation even in the matrimonial home to save the helpless women from vagrancy. The statutory right to live in a shared household in favour of aggrieved wife or dependent women relative under Domestic Violence Act is undoubtly a positive step. But the framers of the law, in their anxiety to cast net wide, seem to have lost tourch with reality and gone over board. The relevant provision that need to be examined in this context are Sec. 17 & 19 of Domestic Violence Act.

### I. Shared Household

Section 17 of Domestic Violence Act talks of right to reside in a shared household.[23] It creates a statutory right in favour of "every women in a domestic relationship," an expression given the wide meaning assigned to word domestic relationship[24] includes not only the wife or women related by blood but also a female friend who has lived, even for a small period under the same roof with the male respondent without entering into a marriage The right declared is that every such women whether or not she has any right title of beneficial interest of her own in premises in question, shall be entitled to reside in the shared household. The right is absolute and subject to denial only in the event of eviction or being excluded in accordance with procedure established.

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[23] Sec. 17 – Right to reside in shared household.

1) Notwithstanding anything contained in any other law for the time being in force, every women in Domestic relation shall have right to reside in the shared household whether or not she has right, title or beneficial interest in the same.
2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with procedure established by law.

But then it need to be seen that how far this provision proves helpful in reality. It gives statutory recognition and thereby encouragement to extramariatal relationships or relation between persons of opposite sex outside of, or without marriage. To put it simply adopting a modern day lingo, women involved in live-in-relationships or adulterous connection are also covered as beneficiaries to the Act. Moreover as per Sec. 17 the beneficiary can be evicted by procedure established by law. But then Domestic Violence Act nowhere makes a mention or makes it clear as to by what procedure an affected respondent would be able to secure an order of eviction or exclusion against such women.

Moreover word 'shared household' may include a property of joint family of which male respondent is merely one of the several members. By putting a restraint against alienation, disposal or enunciation of rights in such shared household, the law seek to virtually shake the right of even such persons who may not have any role to play in the dispute from which the controversy has arisen.

Further more there is not time limit prescribed for which the said "right to reside" would operate in favour of the women. Since right to reside has been created by this special law in favour of a special class of women, it will not be controlled by the existing legal framework including Transfer of Property Act, in as much as and particularly because the right to reside thus brought in existence is irrespective of the "right, title or beneficial interest." In absence of any provision or medium to such effect within, the special law, the male respondent is without a legal remedy against a women for whose benefit the right to reside was never intended. This, is because Sec. 17 does not set out sufficient parameters as which claim to this right is to be tested by Magistrate and in this view, the availability of forum of appeal under Sec. 29 is also of no solace.

## II. Residence orders Sec. 19

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[24] Domestic relationship under Sec. 2(f) of Domestic Violence Act.

Sec. 19 of Domestic Violence Act[25] permits an order to be passed, in the event of domestic violence to facilitate enjoyment of right to reside in the shared household against the backdrop of fued between the parties. The jurisdiction to restrain respondent from disturbing this right to reside even after souring of relation between the parties can be understood, at least to the extent of married wives declining to go back to their parental home. But, some of the possible restraint orders indicated under Sec. 19 seem wholly unjustified and unfair. Some of residence orders amongst other such nature are:

i) Direction to male respondents to remove himself from shared household.[26]

ii) Restraining the respondent from alienating or disposing off the shared household.[27]

iii) Restraining the respondent from renouncing his rights in shared household except with the leave of the Magistrate.[28]

The provisions seem to be unjust and unfair to the male respondent, a person in whom right, title or interest in the property vests is not only restrained to exercise his rights but it also restricts the prospect of reconciliation between the parties. In this view, with no guidelines provided, such an order, if permitted to be passed by the magistrate would work, in the long run, against the interest of women herself. The husband having been thrown out by the law, it is not conceivable as to how the system expects the parties to even broach the subject of comming together through conciliation.

### c) Right to Monetary Reliefs

Sec. 20(1) empowers the magistrate to grant monetary reliefs in favour of the aggrieved women.The purpose of this clause in amelioration viz to help out the women to meet the expenses incurred and losses suffered "as a result of Domestic Violence". In this context, one can understand the quantum, taking into account the loss of earnings, the medical expenses or loss caused due to damage to the property etc. Inclusion of clause (d) of Sec. 20(1) however is misplaced.

The jurisdiction of magistrate to grant maintenance allowance is governed by Sec. 125 of CrPC. There was absolutely no reason why it should be mentioned amongst the monetary reliefs ment to help meeting the expenses consequent to domestic violence.

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[25] Sec. 19 Residence orders

[26] Sec. 19(1) (b).

[27] Sec. 19(1) (d).

[28] Sec. 19(1) (e).

This is bound to create not only utter confusion but also multiplicity of proceedings and consequences which would be grossly unfair to both parties.

Inspite of secular law of maintenance available under Sec. 125 CrPC to all sections of society, now rendered not even subject to ceiling an quantum of allowance that can be fixed (after ammendent brought about to Act 50 of 2001) resort is made to said statutory remedy in addition to, and not as alternative to, the right to secure maintains allowance under the personal laws. Thus, even under the existing arrangement almost every set of parties is locked in litigation over the issue of maintenance simultaneously in the civil as well as criminal courts. A need to simplify the procedure avoid multiplicity of proceedings, particularly in family disputes has been long felt. Some hope was generated in this regard when the family courts Act was enacted. But then, the said law has not been brought in force in all parts of the country. The creation of another statutory provision permitting maintenance allowance to be claimed would undoubtly be construed by ill-advised parties as yet another forum where opposite party could be dragged for similar relief to be agitated. This is bound to add to the multiple proceedings in which the parties may already be spending out their time, energy and resources.

Moreover possibility of abuse of Section 20(1) is writ large when seen against the prospect of a female fried having lived with the male respondent under the same roof in what is called as live-in-relationship (i.e. without marriage) even for a month or so claiming maintenance allowance under the said provision, with no restrictions attached and so possibly for the rest of her life.

## Conclusion:

In a society that treat issues of the welfare of women too casually, some stringent measures are necessary to keep in check the unscrupious and unbridled male of the specie. But this needed to be brought about not by adding to the statute book with-ill-advised measures but through proper enforcement of the existing leagae framework. In an endenour to strike a balance between the mutual rights and obligations of men and women the framers of the law seem to have gone overboard to load the dice totally against the former. The above mentioned facts of the Domestic Voilence Act are only some of its features that leaves one in a disturbed state of mind. The Act has created a framework which is leading towards anarchy and representing a Paradegin shift of tectonic plates supporting civil society. The consequences are bound to be disastrous for the "wife" as the "other women" now has equal claims over man in matters of maintenance and shelter, two issues that count the most. The law projected as welfare measure for women might boomerang destroying the life of women who resposed trust in the sanctity of marriage as institution. One dreads at the prospect of day when society and the polity would be picking up pieces of after math, may be within a decade from now.

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